S. HRG. 100-491

FAA INDEPENDENT ESTABLISHMENT ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1600

TO ENHANCE THE SAFETY OF AIR TRAVEL THROUGH A MORE EFFECTIVE FEDERAL AVIATION ADMINISTRATION, AND FOR OTHER PURPOSES

DECEMBER 17, 1987

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FAA INDEPENDENT ESTABLISHMENT ACT OF 1987

THURSDAY, DECEMBER 17, 1987

U.S. SENATE,
SUBCOMMITTEE ON AVIATION,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:32 a.m. in room SR-253, Russell Senate Office Building, Hon. Wendell Ford [chairman of the subcommittee] presiding.

Staff members assigned to this hearing: Steve Palmer, professional staff member; and Patty Hahn, minority staff counsel.

OPENING STATEMENT BY SENATOR FORD

Senator FORD. Good morning, ladies and gentlemen. I am very pleased to see my good friend Senator Stevens with us this morning. He has a conference that ended at 3:15 this morning and starts back at 10:00 o'clock this morning. That seems to be the story of our lives around here.

I am very fortunate in that my first meeting does not start until 12:00 o'clock, and that is on nuclear waste. So you never can tell what that is going to bring.

But it is very important to me and those that have an interest in an independent FAA that we go as far as we can this year, to have an opportunity over the holidays to analyze where we are and look at the testimony a little harder, and to see what loose ends need to be tied together in order to move with this legislation as early next year as we possibly can.

The success that we have had this year I think has been fairly good, and of course one issue remains unresolved and as such this legislation will be carried over into 1988.

The Aviation Subcommittee today concludes its hearing schedule for the first session of the 100th Congress. It has been a busy year, with our energies focused on the passage of several significant pieces of legislation, including the airport and airway reauthorization bill, the Essential Air Service extension bill, the Air Passenger Protection Act, and perhaps most importantly, numerous safety initiatives.

Yet, as successful as this year has been, one issue remains unresolved and, as such, will carry into 1988. I am speaking of the long-term viability of the Federal Aviation Administration. The subcommittee has already held two hearings on this issue and we intend to focus considerable effort on the question of the appropriate structure of the FAA when the Congress returns next year. And, with other interested groups—most notably, the Aviation Safety Commission and the Office of Technology Assessment—examining this same question, I believe that it will be the issue of foremost concern to the entire aviation community in the coming months.

In my own mind, there is no doubt as to how the FAA should be treated. It should be made independent—separated from the Secretary of Transportation and allowed to perform its air safety responsibilities. Only with such a break—and the elimination of the day-to-day political manipulation by the Secretary and DOT staff—will the FAA be able to adequately ensure the safe operation of our air transportation system—something which has languished under the current structure. Hence, I have proposed S. 1600. This bill, which has been co-sponsored by 19 Senators, would establish an independent Federal Aviation Administration, continuing all of its current responsibilities except with respect to the promotion of aviation. That would be left to the Secretary, as a supplement to his current responsibilities in the areas of international aviation, consumer protection, and EAS. Finally, our bill would establish a seven-year term for the Administrator, a step I believe is needed to ensure continuity in leadership of the FAA. I look forward to hearing from each of the five witnesses who will be testifying today on S. 1600. Each offers a unique perspective on this issue and I believe it is critical that we hear their views.

I will say that we now have 19 co-sponsors on S. 1600. That to me is a significant number of Senators to sign on since the bill has been introduced, and I think it is beginning to sink in to a lot of those in the administration that we are serious about an independent FAA. And there is a lot of thought being given now by the administration, and hopefully we can come with an agreement or close to an agreement after we have returned next year.

Senator Stevens, would you like to make a statement this morning?

Senator STEVENS. I have no statement. I congratulate you again for pursuing these hearings, because there is no question that we must address an independent FAA early next year, and as a very minimum we must find some way to deal with the budgetary problems of the FAA.

I am delighted you are pursuing these hearings.

Senator FORD. Thank you very much.

Senator McCain.

Senator MCCAIN. I have no statement, Mr. Chairman, except to express my appreciation. This is one in a series of hearings that you have held. I think it has not only been very educational as far as this specific issue as to whether the FAA should be an independent agency or not, but also it has given this member, and I believe the American public, a much better understanding of the enormity of the issues and challenges

that lie ahead of us as we address the booming, in fact dynamically growing, airline industry and the fact that we do not have the infrastructure, we do not have the technical capabilities, nor do we have perhaps the commitment on the part of the Federal bureaucracy to cope with these issues.

I think that what has been achieved already in these hearings is very important, and I look forward to perhaps some concrete action in the next year.

Thank you, Mr. Chairman.

[The bill follows:]

100TH CONGRESS
1ST SESSION

S. 1600

To enhance the safety of air travel through a more effective Federal Aviation Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, AUGUST 5), 1987

Mr. FORD (for himself, Mrs. KASSEBAUM, Mr. BYRD, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To enhance the safety of air travel through a more effective Federal Aviation Administration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Aviation Administration Independent Establishment Act of 1987".

FINDINGS

SEC. 2. The Congress finds that—

(1) the civil aviation industry in the United States has, over the past decade, experienced an unprecedented period of rapid development and expansion;

(2) during this period of development and expansion, the Federal Aviation Administration, the administration within the Department of Transportation charged by Congress with the responsibility for overseeing the safe operation of this essential segment of the national economy, has performed its responsibilities in a professional and competent manner, albeit under an organizational structure which substantially predates this period of rapid development and expansion;

(3) the Federal Aviation Administration can perform more effectively within a more streamlined and consistent organizational structure, possessed of the essential management tools necessary to fulfill its mission of ensuring improved and enhanced safety of civil air operations; and

(4) if the Federal Aviation Administration is provided with greater managerial autonomy and consistent leadership, the Federal Aviation Administration can be expected to exercise vigorously its prerogatives under the ongoing oversight of the Congress and with the assistance and guidance of the President.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) the term "Administration" means the Federal Aviation Administration established under section 4; and

(2) the term "Administrator" means the Administrator of the Federal Aviation Administration appointed under section 5(a).

ESTABLISHMENT

SEC. 4. There is established as an independent establishment of the Government the Federal Aviation Administration. The Administration shall succeed the Federal Aviation Administration of the Department of Transportation in existence on the day before the effective date of this Act.

OFFICERS

SEC. 5. (a) The Administration shall be administered by an Administrator, who shall be appointed by the President to a seven-year term of office, by and with the advice and consent of the Senate. The Administrator shall carry out all functions transferred to the Administrator by this Act and shall have authority and control over all personnel, programs, and activities of the Administration. The Administrator shall be compensated at the rate prescribed for level II of the Executive Schedule pay rates.

(b) There shall be in the Administration a Deputy Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions, duties, and powers as the Administrator shall prescribe. The Deputy Administrator shall act for and perform the functions of the Administrator when the Administrator is absent or unable to serve, or

when the office of the Administrator is vacant. The Deputy Administrator shall be compensated at the rate prescribed for level III of the Executive Schedule pay rates.

(c) There shall be in the Administration seven Associate Administrators, who shall be appointed by the Administrator. The Associate Administrators shall perform such functions as the Administrator shall prescribe. The Administrator shall designate the order in which the Associate Administrators shall act for and perform the functions of the Administrator when the Administrator, or in the Administrator's place the Deputy Administrator, is absent or unable to serve, or when either the office of the Administrator or the office of the Deputy Administrator is vacant. An Associate Administrator shall be compensated at the rate prescribed for level IV in the Executive Schedule pay rates.

(d) There shall be in the Administration a Chief Counsel, who shall be appointed by the Administrator. The Chief Counsel shall be the chief legal officer for all legal matters arising from the conduct of the functions of the Administration. The Chief Counsel shall be compensated at the rate prescribed for level IV of the Executive Schedule pay rates.

(e)(1) Each of the officers referred to in this section must be a citizen of the United States; must be a civilian; and must have experience in a field directly related to aviation.

(2) Such officers may not have a pecuniary interest in, or own stock in or bonds of, an aeronautical enterprise, or engage in another business, vocation, or employment.

POWERS

SEC. 6. (a) The Administrator shall be responsible for the exercise of all powers and the discharge of all duties of the Administration.

(b) In carrying out the functions of the Administration under this Act, the Administrator shall be governed by all applicable statutes, including the policy standards set forth in the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.).

(c) Decisions of the Administrator made pursuant to the exercise of the functions enumerated in the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.) shall be administratively final, and appeals as currently authorized by law shall be taken directly to the National Transportation Safety Board or to any court of competent jurisdiction, as appropriate.

(d) The Administrator shall not submit decisions for the approval of, nor be bound by the decisions or recommendations of any committee, board, or other organization created by Executive order.

TRANSFERS AND INCIDENTAL PROVISIONS

SEC. 7. (a) The following are transferred to the Federal Aviation Administration, the independent agency:

(1) All functions vested by law in the Federal Aviation Administration in the Department of Transportation or its Administrator, and all functions vested by law in the Secretary of Transportation or the Department of Transportation which are administered through the Federal Aviation Administration or are related to the Federal Aviation Administration, including those exercised under the following laws and provisions of law:

(A) the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.), except for those functions exercised under section 305 of that Act relative to fostering the development of civil aeronautics and air commerce, exercised by the Secretary of Transportation under title IV of that Act as successor to the Civil Aeronautics Board, and exercised by the Secretary under titles XI or XII of that Act relative to international air commerce;

(B) section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)) along with all functions, duties, and powers which at any time had been vested in the Administrator of the Federal Aviation Administration prior to the revision of title 49, United States Code by Public Law 97–449 (96 Stat. 2413);

(C) the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2201 et seq.);

(D) the Hazardous Materials Transportation Act (49 U.S.C. App. 1801 et seq.), to the extent that such Act pertains to the transportation of hazardous materials by air;

(E) the Independent Safety Board Act of 1974 (49 App. 1901 et seq.) insofar as it relates to transportation by air; and

(F) the Aviation Safety and Noise Abatement Act of 1979 (49 App. U.S.C. 2101 et seq.).

(2) The functions of the Department of Transportation or the Federal Aviation Administration in the Department of Transportation incidental to, helpful to, or necessary for, the performance of the functions transferred by subsection (a)(1) or which relate primarily to those functions.

(3) So much of the personnel, property, records, funds, accounts, and unexpected balances of appropriations, allocations, and other moneys of the Department of Transportation as are employed, used, held, available, or to be made available in connection with the functions transferred by subsections (a)(1) and (a)(2).

(b) The personnel transferred under this section shall be so transferred without reduction in classification or compen-

sation, except that after such transfer, such personnel shall be subject to changes in classification or compensation in the same manner, to the same extent, and according to the same procedure, as provided by law.

(c) The Administrator of the Federal Aviation Administration, an independent agency, shall exercise all functions transferred by subsection (a) of this section or any other function vested in the Federal Aviation Administration or the Administrator of the Federal Aviation Administration by any law subsequent to enactment of this Act. The Administrator may from time to time make such provisions as the Administrator shall deem appropriate authorizing the performance by any other officer, employee, or office of the Federal Aviation Administration of such functions.

RULES; REGULATIONS

SEC. 8. In the performance of the functions of the Administrator and the Administration, the Administrator is authorized to make, promulgate, issue, rescind, and amend rules and regulations. The promulgation of such rules and regulations shall be governed by the provisions of chapter 5 of title 5, United States Code.

DELEGATION

SEC. 9. Except as otherwise provided in this Act, the Administrator may delegate any function to such officers and employees of the Administration as the Administrator may designate, and may authorize such successive redelegations

of such functions in the Administration as may be necessary or appropriate. No delegation of functions by the Administrator under this section or under any other provision of this Act shall relieve the Administrator of responsibility for the administration of such functions.

PERSONNEL AND SERVICES

SEC. 10. (a) In the performance of the functions of the Administrator and in addition to the officers provided for by section 5, the Administrator is authorized to appoint, transfer, and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Administrator and the Administration. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and compensated in accordance with title 5, United States Code.

(b) The Administrator is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

(c) The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5, United States Code.

(d) The Administrator is authorized to utilize, on a reimbursable basis, the services of personnel of any Federal agency.

(e)(1)(A) The Administrator is authorized to accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31, United States Code, if such services will not be used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(B) The Administrator is authorized to accept volunteer service in accordance with the provisions of section 3111 of title 5, United States Code.

(2) The Administrator is authorized to provide for incidental expenses, including transportation, lodging, and subsistence for such volunteers.

(3) An individual who provides voluntary services under subsection (e)(1)(A) shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

CONTRACTS

SEC. 11. The Administrator is authorized, without regard to the provisions of section 3324 of title 31, United States Code, to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration. The Administrator may enter into such contracts, leases, agreements, and transactions with any Federal agency or any instrumentality of the United States, or with

any State, territory, or possession, or with any political subdivision thereof, or with any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate. The authority of the Administrator to enter into contracts and leases under this section shall be to such extent or in such amounts as are provided in appropriation Acts.

USE OF FACILITIES

SEC. 12. With their consent, the Administrator may, with or without reimbursement, use the services, equipment, personnel, and facilities of Federal agencies and other public and private agencies, and may cooperate with other public and private agencies and instrumentalities in the use of services, equipment, personnel, and facilities. The head of each Federal agency shall cooperate fully with the Administrator in making the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. The head of a Federal agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administration, without reimbursement, supplies and equipment other than administrative supplies or equipment.

ACQUISITION AND MAINTENANCE OF PROPERTY

SEC. 13. (a) The Administrator is authorized—

(1) to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain—

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(A) air traffic control facilities and equipment;

(B) research and testing sites and facilities; and

(C) such other real and personal property (including office space and patents), or any interest therein within and outside the continental United States,

as the Administrator considers necessary;

(2) to lease to others such real and personal property; and

(3) to provide by contract or otherwise for eating facilities and other necessary facilities for the welfare of employees of the Administration at its installations and to purchase and maintain equipment for such facilities.

(b) Title to any property or interest therein acquired pursuant to this section shall be in the United States.

(c) The authority granted by subsection (a) shall be available only with respect to facilities of a special purpose nature that cannot be readily be reassigned from similar Federal activities and are not otherwise available for assignment to the Administration by the Administrator of General Services.

(d) The authority of the Administrator to enter into contracts and leases under this section shall be to such extent or in such amounts as are provided in appropriation Acts.

FACILITIES AT REMOTE LOCATIONS

SEC. 14. (a) The Administrator is authorized to provide, construct, or maintain for employees and their dependents stationed at remote locations as necessary and when not otherwise available at such remote locations—

(1) emergency medical services and supplies;

(2) food and other subsistence supplies;

(3) meeting facilities;

(4) audiovisual equipment, accessories, and supplies for recreation and training;

(5) reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) living and working quarters and facilities; and

(7) transportation for schoolage dependents of employees to the nearest appropriate educational facilities.

(b) The furnishing of medical treatment under subsection (a)(1) and the furnishing of services and supplies under subsection (a)(2) shall be at prices reflecting reasonable value as determined by the Administrator.

(c) Proceeds derived from reimbursements under this section shall be deposited in the Treasury and may be with-

drawn by the Administrator to pay directly the cost of work or services provided under this section, to repay or make advances to appropriations of funds which do or will bear all or a part of such cost, or to refund excess sums when necessary, except that such payments may be credited to a service or working capital fund otherwise established by law, and used under the law governing such funds if the fund is available for use by the Administrator for performing the work or services for which payment is received.

TRANSFERS OF FUNDS FROM OTHER FEDERAL AGENCIES

SEC. 15. The Administrator is authorized to accept transfers from other Federal agencies to funds which are available to carry out functions transferred by this Act to the Administrator or functions assigned by law to the Administrator after the date of enactment of this Act.

SEAL OF ADMINISTRATION

SEC. 16. The Administrator shall cause a seal of office to be made for the Administrator of such design as the Administrator shall approve. Judicial notice shall be taken of such seal.

STATUS OF ADMINISTRATION UNDER CERTAIN LAWS

SEC. 17. For purposes of section 551 of title 5, United States Code, the Administration is an agency. For purposes of chapter 9 of such title, the Administration is an independent regulatory agency.

SAVINGS PROVISIONS

SEC. 18. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in regard to functions which are transferred under this Act to the Administration on or after the date of enactment of this Act, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Administrator or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect; and such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made

pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance of modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(c)(1) The provisions of this Act shall not affect suits commenced prior to the date this Act takes effect.

(2) In all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) In any case involving one or more officers required by this Act to be appointed by and with the advice and consent of the Senate who shall not have entered upon office on the effective date of this Act, the President may designate any officer whose appointment was required to be made by and with the advice and consent of the Senate, and who was such an officer immediately prior to the effective date of this Act, to act in such office until the office is filled as provided in this Act. While so acting, any such person shall receive compensation at the rates provided by this Act of the respective office in which he or she acts.

AUTHORIZATION OF APPROPRIATIONS

SEC. 19. There are authorized to be appropriated such sums as are necessary to carry out the purposes and provisions of this Act. Notwithstanding any other provision of law, there are authorized to be appropriated, for any fiscal year beginning after September 30, 1987, for use of the Administration, such sums as are specifically authorized to be appropriated as of the date of enactment of the Act.

LAWS AND REGULATIONS

SEC. 20. Except to the extent otherwise provided in this Act, all laws, rules, and regulations in effect and applicable to the Federal Aviation Administration of the Department of Transportation and to the Administrator of such Administration on the date immediately preceding the effective date of this Act shall, on and after such effective date, be applicable to the Federal Aviation Administration and the Administrator established by this Act, until such law, rule, or regulation is repealed or otherwise modified or amended.

REPEALS

SEC. 21. Section 106 of title 49, United States Code, is repealed.

EFFECTIVE DATE

SEC. 22. The provisions of this Act shall take effect upon the expiration of the one-hundred-and-eighty-day period following the date of enactment of this Act.

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Senator FORD. I thank the distinguished Senator. With his background and knowledge, he has been very important to the committee, and his dedication to this arena is something that we have needed for a long time and I am very appreciative of it.

Hopefully, we might look forward to a hearing in your state right after the first of the year to get into some of the general aviation problems and look at a total picture. I think the committee is complimented by your presence.

So let us start out with the hearings this morning, and the first witness will be Capt. Henry A. Duffy, who is President of the Air Line Pilots Association. Hank has been one who has been very faithful in his testimony and worked with the committee. We appreciate that, Captain, and we look forward to your testimony this morning.

You might advise the committee of your associate.

STATEMENT OF HENRY A. DUFFY, PRESIDENT, AIR LINE PILOTS ASSOCIATION; ACCOMPANIED BY JOHN O'BRIEN, DIRECTOR, ENGINEERING AND AIR SAFETY DEPARTMENT

Mr. DUFFY. Thank you, Mr. Chairman. On behalf of the 40,000 pilots that the Air Line Pilots Association represents on 43 airlines in this country, we appreciate the opportunity to share our views on the concept of an independent Federal Aviation Administration

With me today is Mr. John O'Brien, who is the Director of ALPA's Engineering and Air Safety Department.

As you are aware, Mr. Chairman, there is no shortage this year of either philosophy or testimony by the movers and shakers of the aviation industry on this particular subject. For example, in January the Air Traffic Control Association hosted a symposium that addressed the proposal of the Air Transport Association to form a Federal corporation which would operate and maintain the nation's air traffic control system independent of the FAA.

The key members of the aviation community who participated in this event clearly indicated their opposition to such a concept and instead suggested alternatives such as an independent FAA.

As you will recall the testimony before your subcommittee in September and October by many of the same organizations and people who also participated in the ACTA symposium. Again these voices were clear that the current mode of operation is totally unsatisfactory and changes must be quickly made if the national air space system is going to be able to accommodate future aviation growth safely.

The virtually unanimous decision by the aviation community to support the separation of the FAA from the Department of Transportation is a position developed only after a most serious examination of the merits of such a concept.

We are aware of the potential problems associated with the formulation of an independent FAA, but still choose that option over the current ineffective and stagnated system. We recall that on April 1st, 1967, the Federal Aviation Administration was absorbed into the Department of Transportation only because of a policy decision to consolidate all modes of transportation under one cabinet position, not because the independent FAA was doing an effective job.

While a few of these relationships have been positive, the majority have resulted in a situation properly described by former FAA Administrator Halaby before this subcommittee on September the 9th. He stated:

The distinct trend has been to give the Secretary all of the authority and the Administrator all of the responsibility for the modernization of the system and the safety and productivity of its operation. Whenever authority is divorced from responsibility, accountability is confused and effectiveness is all but destroyed.

I would like to give you some examples of the inefficiencies that have occurred because of the relationship alluded to by Mr. Halaby. First, there frequently has been no consistency in long term plans for system modernization. Budgets have been revised and priorities for technical programs changed.

Second, senior management within the FAA frequently has been degraded because a Secretary has assigned unqualified people to key FAA positions. Supergrade authorizations within the agency have been controlled by the DOT and the DOT has had the final word on total manning figures within the FAA.

Third, the final configuration of the FAA budget has been either approved or revised by the DOT, as have more mundane matters such as the size and location of conferences and requests for international travel.

Fourth, aviation safety matters have been slowrolled by the DOT. An example of this is a petition by ALPA submitted relating to airborne weather radar, which has been delayed excessively within the DOT.

Fifth, many of the decisions relating to the above items have been made by people with little or no aviation background. This has required an extensive education program that frequently has resulted in compromise positions on matters the aviation community considers of significant importance.

And finally, testimony and correspondence to the Congress from the FAA are subject to review by the DOT and we believe this inhibits a frank exchange of views between the two parties.

When an independent FAA is considered, the subject of a lack of cabinet representation is certain to arise, as are the dual roles of safety and the promotion of civil aviation. In our opinion, neither issue should be the factor that governs whether an independent FAA is formed.

The relationship of an independent FAA administrator to the executive branch could be structured in several ways, and we are confident the Congress would ensure that the most effective means would be included in the enacting legislation.

In regard to the dual responsibilities, ALPA has testified before Congress on several occasions that there is a conflict between the responsibility for promoting civil aviation and ensuring aviation safety. This problem could best be resolved, however, by giving the DOT the responsibility for those tasks previously assigned to the Civil Aeronautics Board and the responsibility for promoting the growth of civil aviation.

This would leave the operation and responsibility for safety to an independent FAA. S. 1600 appears to address this issue to some extent, but two items of critical importance to the success of an independent FAA are not addressed in S. 1600: first, FAA access to the aviation trust fund and second, the formation of an independent advisory committee to provide the administrator feedback and suggestions for system improvement.

Clearly, the current aviation trust fund concept is not meeting the needs of the users and a more effective and simple means must be devised to fund FAA operating expenses and system improvements.

Again, there are several options as to how this could be done. While S. 1600 should not be held hostage to resolving this issue, it is important that Congress initiate a parallel effort to allow the administrator more direct access to the aviation trust fund.

If this is not done, the full potential of an independent FAA as contained in S. 1600 may not be realized.

We believe it is also essential that the bill include a requirement for the formation of a high level advisory board composed of members of the aviation community who will provide recommendations on aviation matters to the FAA administrator. This would ensure a cross-fertilization of ideas and would also ensure that any long-term administrator would consider the legitimate requirements of the system users.

Again, the bill should not be delayed for this item, but serious consideration is necessary.

In summary, Mr. Chairman, we strongly endorse S. 1600. We particularly support the seven year term of office proposed for the administrator because we believe this would provide long term, stable leadership.

We also believe that if the bill is to be truly effective, a parallel bill revising FAA access to the aviation trust fund must be initiated by the Congress. We urge that S. 1600 receive priority consideration on your busy schedule. We are willing to help in any way possible to ensure its passage.

Senator FORD. Thank you very much, Captain Duffy.

Since Senator Stevens may have to leave shortly, Senator, do you have some questions you would like to ask? I will forego mine for a moment.

Senator STEVENS. Thank you, Mr. Chairman.

I was one of the early supporters of the Federal corporation idea, primarily because of the concept that we would take the trust fund off budget. You came in pretty hard there, as a matter of fact, the airline pilot community, and smacked that down.

Have you changed your mind?

Mr. DUFFY. No, Senator Stevens.

Senator STEVENS. It sounded it like you have with that separate bill to have independent access to this trust fund.

Mr. DUFFY. Actually, we applauded ATA for putting the concept out there. We felt the concept probably launched this whole discussion that is leading to a better proposal. We saw problems with the private corporation—with the Federal corporation.

We saw problems with the coordination with the DOT—I am sorry, with the Department of Defense. We saw problems in separating the operation of the air traffic control system from the people who make the rules and enforce the rules. So we thought that there were some flaws in that concept, and we think that the independent FAA provides an overall approach to fix the same problem.

Now, the trust fund problem, we have talked about it ad infinitum, I guess. I think we all believe that the trust fund—we all in the aviation community believe that the trust fund should have been taken off the budget. We understand the internal problems that that creates.

But I think we as one organization in the community feel that the trust fund could support the total FAA budget and think we will eventually move in that direction.

Senator STEVENS. That is what motivated us towards the independent corporation, although I have got to tell you that the model that we had, the Postal Service, we are going through right now budgetary problems because it still is on budget, notwithstanding its independence as a corporation. But we hoped we could create a new concept and take this one off budget, the FAA type corporation off budget, and take the Postal Service off budget, too.

Both are totally funded by ratepayers, by users, rather than by taxpayers now almost. And I think the Postal Service would be willing to cut that cord if it finally did get its budget totally divorced from the Federal budgetary system.

I have just told the chairman I would like to co-sponsor S. 1600, because it looks like it is the only game in town, frankly, and I would just as soon see it at the table. But I have got to tell you, I would rather have some concept of linking the second budget proposal to S. 1600. That will be my goal, to see if we cannot do that.

I thank you.

Senator FORD. I might say, due to my eloquence we now have 22 cosponsors instead of 20.

Senator STEVENS. Thank you. I appreciate it.

Senator FORD. Senator McCain, do you have some questions you would like to ask?

Senator MCCAIN. I would be glad to wait, Mr. Chairman.

Senator FORD. Go right ahead.

Senator MCCAIN. Thank you, Mr. Chairman.

And Captain Duffy, thank you for appearing before the subcommittee again. You have done that many times and each time you have provided us with a lot of very important information, particularly considering the unique perspective which you give us on these very important issues.

I would just like to discuss a little bit of your testimony with you. I am not in disagreement with many of your statements, but it is not clear to me, Henry, that by the enactment of this legislation we are going to cure the problems that you delineate.

For example, you say: "Aviation safety matters have been slowrolled by the DOT. An example is the petition by ALPA submitted relating to airborne weather radar." You are convinced that if we enact S. 1600 that you will no longer be slowrolled by the FAA?

Senator FORD. You might be slowrolled by the Congress.

Mr. DUFFY. Senator, there is another whole review role superimposed on the FAA. The example that we used got the approval of the FAA for a rulemaking five years ago, and for five years it has not made the DOT cut list for approving a new rulemaking.

And that is just an unnecessary weight to add on to safety items that really should be a lot more timely than that.

Senator McCAIN. Following that, you made the statement: "Many of the decisions relating to the above items have been made by people with little or no aviation background." That is a very polite way of saying we have been the victim of cronyism.

We appoint an independent administrator of the FAA for seven years, a set term, basically he cannot be removed. What is to prevent the wrong appointee from putting people in who will make decisions who have little or no aviation experience?

Mr. DUFFY. I do not want to be moved into the position of thinking we are creating a perfect system the other way. Certainly those possibilities always exist. What we have seen is a direct line not only from the Secretary of Transportation, but it has infiltrated all of the levels of the FAA, so that there is the direct appointment problem, but there is also the miromanagement problem that exists from DOT and a less aviation-oriented person at the DOT and imposing a management responsibility across to their opposite number over at the FAA, who is usually more aviation-oriented.

And that again is an unnecessary layer so far as we can see.

Senator McCAIN. Henry, you quoted Mr. Halaby's statement and I thought that was significant testimony. As you might remember, he was part of a panel of former administrators of the FAA or former Secretaries of Transportation who testified before this committee.

There was not unanimity on that panel. There was probably a couple hundred years of experience in aviation matters that were before this subcommittee. How do you account for the fact that there are certainly some differences in opinion amongst those numbers?

Mr. DUFFY. I think it depended on their own individual experience. Mr. Boyd, for instance, supported the current concept with some changes.

But I think it is notable that they all seemed to say that how well it works depends on the chemistry between the administrator and the DOT Secretary. If we are going to have to suffer through inefficiencies in the system just because the chemistry is not working and take a one or two year delay in essential programs because that chemistry does not work, then I think we should remove the chemistry.

Senator McCAIN. Also in your statement, you said: "Clearly the currently aviation trust fund concept is not meeting the needs of the users. There is certainly no disagreement on that, and a more effective and simple means must be devised to fund FAA operating expenses and system improvements."

Again, there are several options as to how this could be done. Perhaps you could provide us, either now or in writing, some of those options besides Mrs. Kassebaum's proposed legislation.

Mr. DUFFY. We would be happy to do that, Senator. But let me just say that again I think we are going to move towards—we would like to see us move towards a two-way trigger tax that dedicates the whole trust fund to supporting the FAA budget.

I think this will have more and more appeal. Certainly there have to be overall budgetary constraints or we think there will be overall budgetary constraints on how much is spent in this area.

But the FAA administrator, who is clearly looking at aviation safety and the functioning of the system, should have more control of his access to funds without going through a DOT and OMB screen when those two levels have less concentration on aviation safety.

Senator McCain. Finally, while you are here, I am sure you are aware of what appears to be a very serious problem. The chairman and I were just discussing the use of identification badges. Mr. Chairman, what was it, some 6,000 badges at L.A. airport are now either lost or unaccounted for, and I would imagine that this is not a unique situation.

Are you very concerned about this issue and have you got any ideas about what needs to be done?

Mr. Duffy. We are very concerned. We are concerned at two levels. We are concerned that there will not be an overreaction or the wrong reaction to what turned out to be a flaw in the system. As we have seen in most security matters, we have tried to match the deterrent to the threat. We just found a new threat. We just found a new way that the system can be breached.

There is technology in the form of reader badges, electronic reading of badges, that costs money. And we have not put in for that reason.

But just like all the other things that we have discovered are necessary in the security system, this is a new need. We think that there is technology there to absolutely fix it, and that is where the concentration should be.

Senator McCain. So you are recommending that the airports as soon as possible adopt some kind of technology where you just do not walk by from about 50 feet away and flash a badge, as I have observed on a regular basis; that we have got to have some kind of thing like you have in a checkout line of a grocery store?

Mr. Duffy. Even with the current system, we believe in the touch approach. We think the security guard should touch the ID and look at the ID.

But the more sophisticated technology does exist. There is a trial program going on at BWI either now or in the very near future that allows a badge to be run through a reader. The currency of the badge is immediately checked. It is an electronic fix to the system.

There is a trace left that will tell who passed what checkpoint at what time. And all of that is new technology that I think we now see the need for, and so now there is a need to spend some money in that direction.

Senator McCain. Thank you.

Thank you, Mr. Chairman.

Senator Ford. Thank you, Senator McCain.

Captain Duffy, you have stated that ALPA and most of the aviation industry support the idea of separating the FAA from DOT. If this is accomplished, how will aviation safety for air travelers be improved?

Mr. DUFFY. To begin with, the more expeditious—or the removal of the reviewing processes that currently exist by the DOT over the FAA will allow a more expeditious production of safety regulations. And certainly most of the items that we deal with, when we find a problem we want a quick fix.

And the airborne weather radar rulemaking that I laid out for you there, while that is not an item of high criticality, it is certainly something that should not have been delayed for five years.

So it will make the whole process much more timely. Now, if we could also move to that next step and provide the adequate funding for the system, that the trust fund is being spent, then I think we would have made tremendous strides in aviation safety.

Senator FORD. One of the problems as I view it will be the matter of the trust fund, getting it off budget and directed toward the FAA and our safety situation. I think if you have been following the conferences the last few days, you will find that DOT has interfered with FAA and they are trying to shift the funds.

Instead of having the shortages in DOT, they are taking away from FAA and trying to find other means, maybe from the trust fund, to take all of the funding, rather than taking some of the general fund and putting it in as we have in the past.

So we are moving under our structure to do what we want to do, I think, under the independent FAA and the trust fund to go for that cause. After we get through with this round, what goes around comes around, you know, and so this will come around next year. I think we will have an opportunity then to revisit that, subject to the problems we have seen, that DOT has been the dominant figure here and we again, as Captain Duffy has said, have been delayed, or we are required to do some things in order to take care of the mother hen.

So I would hope that under the circumstances—I have tried hard as I could this year, being my first year as chairman, to move in the direction of safety. I think we are going to have some large hammers fall within the next 30 to 45 days, and that will be as it relates to air safety.

And I am encouraging the FAA to move in that direction, to let those hammers fall, because it is of very, very great concern to me and very, very worrisome, and I do not want anything left undone that would increase air safety.

I have a personal reason, that is one. But I also have a responsibility, and I want to shoulder that responsibility as best I can.

I think Thurgood Marshall said the other night in his interview that he wanted to be known as the fellow that did all he could do with what he had to do with. I want to do the same.

Captain Duffy, you mentioned that you are aware of the potential problems associated with the creation of an independent FAA, but that these problems outweigh the current situation.

What are those problems and could they be overcome by doing something short of setting up an independent FAA?

Mr. DUFFY. Well, the debate always comes down to, do you lose more when you lose your cabinet champion for aviation than you gain by the efficiencies that we think will result from the removal. We do not see any middle ground. And once again, the original concept when FAA was moved under the Department of Transportation, it was not because it did not work.

It was working adequately. Of course, the whole aviation system and our whole industry has changed since then. But the concept of all of the modes of transportation being under one Department and one Secretary, we understand that concept.

But I do not think they foresaw the extra layers of bureaucracy that would develop, and I say bureaucracy in its most pejorative terms because I think it has been a slowing type of bureaucracy, that has hindered the development of good aviation regulations.

Senator FORD. You mentioned chemistry earlier, and I believe when the first Administrator was appointed his chemistry was very good with the President of the United States at that time. It is my understanding that he could pick up the phone or visit the White House, and that made it work very well.

From there on there have been varying degrees of good chemistry and bad chemistry, and I think we understand that very, very well. That happens even in families, you know.

In conjunction with the enactment of S. 1600, Captain Duffy, you have suggested that we create a high level advisory board to provide recommendations on aviation matters to the administrator. That sounds good, but is that not exactly what the critics of our bill have claimed will happen with an independent FAA, that the industry will become the dominant figure in the independent FAA?

Mr. DUFFY. I think that there is an absolute necessity for the administrator in a formal sense to be advised of the currency of the problems in the industry. Now, you know, we each visit with him and, as you know, we formed our user group in order to try to communicate where we are together on positions with added force.

But certainly, the administrator needs to have the current view of the problems presented to him, and we think it should be done in a formal sense, in a structured advisory board, rather than the more informal way that we do it now. But of course we all do it now, both with the DOT Secretary and with the FAA administrator, trying to make them aware of the problems as we see them and the correct fix to those problems.

Senator FORD. Captain Duffy, I do not have any additional questions. I just want to thank you for your earnest effort to help us in this structure and your ability to advise and counsel and to compromise in some respects, but never compromising on safety. And I compliment you on that.

Senator Kasten.

Senator KASTEN. Mr. Chairman, I have no questions at this time.

Senator FORD. Thank you, and have a happy holiday season.

Mr. DUFFY. Thank you, Mr. Chairman.

Senator FORD. The next witness will be Jonathon Howe, President of the National Business Aircraft Association. Mr. Howe, good morning.

STATEMENT OF JONATHON HOWE, PRESIDENT, NATIONAL BUSINESS AIRCRAFT ASSOCIATION

Mr. HOWE. Good morning, Mr. Chairman. It is a pleasure to be back here to testify on this very important issue.

As has been my practice in the past, rather than read my testimony, I would like to simply highlight a few points which I think are very important ones.

Senator FORD. Your testimony will be included in the record in full.

Mr. HOWE. Thank you very much, Senator.

First of all, as I think you are aware, we had originally opposed the ATA proposal and still do have very strong reservations about the so-called Federal corporation or the so-called privatization of the FAA, and our concerns in that area still remain strong.

However, we feel equally strongly that your bill occupies, if you will, the middle ground between perhaps some of the strong feelings that oppose the privatization and some of the people that are in favor of keeping the FAA within the Government.

And I think, as Senator Stevens very eloquently put it, I think it may well be the vehicle by which all of our concerns can be addressed.

I would like to just maybe spend a couple of minutes talking about some of the concerns that we have that need to be addressed, regardless of whether we go to an independent FAA or not. It may well be that the independent FAA is the vehicle for doing that.

First of all, I am particularly pleased that your bill does now include a provision for a fixed term administrator. We feel that that is a very, very important element, regardless of what other legislation we have. I think it would go a long ways toward depoliticizing the FAA and depoliticizing the administrator of the FAA and would in and of itself give him considerable freedom of action that he presently does not have.

The obvious analogy here is the fixed term for the director of the FBI, which I think in many cases is very analogous, in that that clearly is another function of Government that should not be subject to political whims. So therefore I think the fixed term provision has great merit and we strongly endorse that provision.

Secondly, as you yourself have indicated and I think one of the things that all of us are very, very concerned about is that the level of funding for both the FAA capital programs, including the airports, as well as obviously the operations and maintenance, be assured. We are very, very much concerned that unless either the off-budget provisions which we have talked about before or something similar that would assure adequate funding for the safety systems in this country be accomplished, that an independent FAA would still be subjected to the same type of OMB types of pressures, the same type of pressures that we are familiar with.

And that I think would be a very, very serious problem. One of the things that, as I am sure you are aware, we are very concerned about, just as an example of that right now, is the apparent what I would call midnight raid on the trust fund that seems to be around town, and we would hope that something could be done about addressing that, because that is the very type of thing that is likely to happen even with an independent FAA unless some very strong policing of that process can be accomplished.

The other area that I think is very important—and I think Captain Duffy may have touched upon this and I feel like he does—that we must assure that the FAA administrator be able in fact to exercise independent safety judgment.

As I am sure you know, there are presently contradictions between the Federal Aviation Act of 1958 and the DOT Act of 1966, which for years have clouded the issue of whether the Secretary of Transportation is empowered to act in matters concerning safety or whether the administrator of the FAA is empowered to act.

And we feel very strongly that, regardless of the outcome of this legislation, that that is an issue that must be addressed. Otherwise we are going to constantly see repetitions of, for example, an event that just took place here within the last month of a serious, significant safety issue with respect to fire-blocking of seats and fabrics inside aircraft, where the Department of Transportation in fact overruled a position that the FAA had taken and in fact had assured the industry of.

And it is examples such as that that I think must be addressed and must be addressed legislatively, because they have festered for 20 years.

Once again, I think that many of our other concerns which we have discussed fully in the testimony probably relate more to the public corporation or the privatization issue. But they may have some relevance as far as the independent FAA statute. I will just touch on a couple as examples.

First of all, I think it is very important that the standby military value of the system be assured. Clearly, this is a system that does have a very important role in national defense.

Secondly, we must—and I am sure you will be hearing from my friends from the air traffic control side of the house that controller staffing issues must be very carefully addressed. We must also be sure that there be provisions that would not permit any type of a strike or a walkout or some of the other types of things that could perhaps happen to a private corporation or even a public corporation.

Secondly, I think that the regulatory relationship between the management of the national air space system and the classic safety regulatory responsibilities of the FAA must be preserved.

One of the great benefits of the Federal Aviation Act of 1958 when it came into being was to join under the direction of a single person, the FAA administrator, both the safety regulatory responsibilities of the system and the management of the national air space system. We think that it would seriously weaken the prospects of safety in this country if you wound up fragmenting the regulatory relationships outside of or independently from the management of the national air space system.

So we think that must be addressed.

Finally, an area that I feel very strongly about, and I think it is a very good example of one of the things that needs to be addressed, again in terms of potential conflicts between the Department of Transportation and the FAA, is the whole issue of airport access and system capacity. We right now are in a situation where there is a difference of opinion, a very strong difference of opinion, between the FAA with respect to airport access and the role of individual airports.

And I am referring to the activity that is going on at Boston Logan and the Massport proposals and the Department of Transportation. We think that the public is entitled to a very clear understanding and articulation of important policy issues such as that, and we think that it is absolutely devastating to a system to have an FAA that takes one position and a Department of Transportation that potentially takes another position.

So those types of issues I think must be addressed. Whether they can be addressed by an independent FAA, whether they can be addressed by some other type of legislation, I think those are the key things that really must be looked at.

We welcome this legislation as a vehicle by which those issues can be addressed.

Let me simply close by saying that, as I indicated earlier, we have I think moved off of what I guess a year ago was a fairly hard line position against any changes. We are pleased to see that the Air Transport Association and a number of others have also softened their position with respect to the privatization or the public corporation, and we think that there is a large amount of consensus within the industry right now for the types of things that we have been talking about.

And we think that your legislation probably provides the best vehicle for accomplishing these, and I am simply delighted that there is this legislation, that this is a vehicle to correct some very serious deficiencies in the system. And I think that all of us are in a position to be able to sign on to correcting those deficiencies.

Thank you very much, sir.

[The statement follows:]

STATEMENT OF JONATHAN HOWE, PRESIDENT, NATIONAL BUSINESS AIRCRAFT ASSOCIATION, INC.

Mr. Chairman and Members of the Subcommittee: I am Jonathan Howe, President of the National Business Aircraft Association, Inc. (NBAA). Once again, I appreciate the opportunity to appear before you to provide the association's views on an important issue confronting aviation. For the purpose of this hearing, I will focus on the subject of an independent FAA, which is not necessarily all that bad, but as well with certain concerns about the proposal and other proposals to reform the Air Traffic Control System.

The NBAA represents the aviation interests of business in the United States. Our member companies own and operate aircraft for use in meeting their daily business transportation requirements. This segment of the aviation industry, which is frequently referred to as business aviation or corporate aviation, utilizes aircraft for time critical travel by both company executives and transportation of valuable cargo. NBAA represents approximately 5300 American businesses, including eighty-five percent of the Fortune 500 companies which are regular users of the Air Traffic Control System.

These companies, along with the other members of the association, have a vital interest in the issue of altering the FAA and/or reforming the system.

In order to "do something" in light of increasing pressures on the ATC System and the concomitant barrage of criticism leveled at the FAA, as well as others, some (including Senator Ford) have suggested removing the agency from the Department of Transportation. Proponents of the proposal might argue, and have, that an independent agency responsible for aviation safety would be more responsive to the unprecedented problems we are currently facing. In fact, they might remember happier times before the DOT was established in 1965 and the FAA made a part of it.

Under the current management structure, the DOT exercises tight control of FAA activities. This control extends to approval of major staff changes, policy and, most importantly, an effective veto over anything the FAA attempts that doesn't agree with the Department's or OMB's political agenda.

Other problems relate to funding for airport development. In the five years since the FAA's airspace modernization plan was approved by Congress, the Administration has routinely requested far less than the authorized amount from the Trust Fund to fund these programs...(although it appears that very recent action by some in Congress relative to the DOT appropriations process may result in significant funding from the Trust Fund of FAA 0 & M, which is not necessarily what the funds were collected for? As an independent agency, FAA would remain under the budget control of the Administration and very little real progress in resolving these funding problems could be expected. Since the new agency would lose a cabinet-level spokesperson, irrespective of that individual's inclination as to FAA funding, these problems could very well be exacerbated—something users of the airspace should not be asked to tolerate.

Creation of an independent FAA may not be the panacea envisioned. What must be realized is that the promotion of civil aviation safety is the promotion of its growth—these goals are not at cross purposes—and that the problems currently besetting the FAA and the nation's air transportation system are the result of years of neglect although Congress has now decided to focus on the problem and is trying to develop legislation measures to solve it.

We therefore have some reservations about the proposal to create an independent FAA, unless mechanisms can be put in place that would assure adequate funding for both the day-to-day operation of the ATC system as well as airport funding. In addition, and most importantly, it is imperative that there be assurances in related legislation that would allow the FAA to exercise independent safety judgements.

With regard to the specific idea of a Federal corporation, NBAA is extremely concerned that in the eagerness to create a new "business-like" institution the search for "efficiency" may become predominant to the requirement for safety. The economics of airline operations may, in other words, become the driving force at the expense of safety. And in our view there are precious few services enjoyed by the public, or in which there is a stronger and more pervasive public interest to be upheld, than aviation safety.

Under the Federal corporation proposal, the Federal government would seem to remain responsible for only a portion of aviation safety, specifically the parts related to certification, airworthiness and licensing. The remaining areas, the vast field related to operation of aircraft, would become the responsibility of a corporation whose short term goals might at times overlook the huge safety responsibility entrusted to it.

We feel there is grave danger in "defederalizing" a service which has been wholly in the public domain for almost half a century, particularly in an environment where a major portion of the interests competing for ATC services are primarily concerned with bottom line economics. This environment would seem ripe for abuse.

On a philosophical basis, therefore, the Federal corporation concept is flawed. Beyond that, the proposal is quite parochial in that it appears to involve giving the airlines a "captive" ATC System. We think the result would be a system that serves the interests of airlines first, and all others second.

There are a number of unanswerable questions surrounding any proposal to move the ATC to a federal corporation or otherwise privatizing the system:

—How would the standby military value of the system be affected by the proposal?

—What processes could be invoked to make it attractive to existing, trained air traffic controllers to transfer to the new corporation? What would happen if a substantial

number of controllers decided not to join the new corporation. How would the system operate while a new training program, divorced from the government facilities and trainers now employed, were established, checked out and brought up to full effective speed?

—Nowhere does the proposal address the very important question of reimbursing the government (that is, the U.S. taxpayer) for the costs of existing air traffic control facilities and equipment. It is inconceivable to think that either the Congress or the general public will stand still for turning over millions of dollars worth of facilities and equipment as a "gift" to a Federal corporation.

—What criteria will govern installation of navaids? Will all these things be governed wholly by the "user pays for it" philosophy? If so, then the "public utility" base on which our air traffic system has been built will be eroded. Not only will efficiency suffer, in our opinion, but business aviation and therefore the competitive edge it gives U.S. business will be severely impacted.

There is a maxim which applies very aptly to the Federal corporation proposal: "Defederalize what the government consumes, not what it provides."

In short, the various proposals for privatization cannot guarantee three essentials: first, impartiality in its dealings with all segments of the aviation user community; second, public credibility that actions taken are in the best interests of the entire travelling public; and third, none of the proposals for privatization can assure uninterrupted funding at levels that will ensure safe and efficient operations of the ATC system.

Two other viable options exist:

—One is to remove FAA's user-supported programs from consideration as part of the "regular" Federal budget process. Let these deficit-proof programs sink or swim on their own merit, without undue political pressure or the vagaries of automatic budget-cutting schemes.

—Another would be to modify the respective powers of the DOT Secretary and the FAA Administrator. Just as DOT's anti-trust authority over airline mergers is to be transferred to the Department of Justice, so can much of the authority now delegated to the Secretary be transferred back to the FAA Administrator where it belongs.

—Finally, we support the concept of a fixed term Administrator as a means of better insulating safety matters from political winds.

In conclusion, although we have serious concerns with the various "privatization" proposals, and urge caution in terms of certain aspects of the independent FAA concept while not discounting it altogether, NBAA is anxious to work with the Subcommittee, the entire Congress, the Administration and all interested parties to develop a rational and reasoned solution to the problems facing the air transportation system.

Once again, thank you for allowing me to appear before you today and I will be glad to entertain your inquiries and/or comments.

Senator FORD. Thank you very much, Mr. Howe. I think you bring a unique perspective to these hearings, having been an official in FAA for many years.

If we were to adopt a bill establishing an independent FAA, what are some of the specific provisions that need to be included in the bill to improve the ability of the agency to enhance safety?

Mr. HOWE. Well, I think the most critical of all is to assure that, however it is done, that the system be depoliticized and the fixed term administrator we think goes a long ways towards doing that.

Once again, the funding issue must be assured. The points that Captain Duffy made I heartily concur in. We must assure that the system allow professionals with aviation background and experience to rise to the top, to be allowed to make decisions, and to not have those decisions be second guessed or interfered with by people without that type of background or experience.

I think those are the types of things that it is critical be done. There may well also be a need for doing the types, management types of things that are presently done within agencies such as the FBI and CIA that would tend to insulate further the rank and file of the FAA from political oversight or political interference, I guess I should say, particularly within the executive branch.

I think the freedom, the ability of professionals to make professional safety judgments, with the input and consultation of the industry, consultation with the Congress, consultation obviously with the executive branch, is very important.

But I just think that it is very, very important that the system be operated in such a way as to not second guess or interfere with professional safety judgments.

Senator FORD. Mr. Howe, what do you see as being a specific benefit of an independent FAA for business aircraft?

Mr. HOWE. I think one benefit clearly, and this is not unique to business aircraft, I think it is common to the entire aviation community, is that we would have an opportunity to be able to be heard directly at the technical level, at the operational level, with respect to many concerns that we and many others in the aviation community share on a variety of technical issues—airport access, flow control, separations standards, the need for instrument landing system.

Just as an example, just as an observation, we were very concerned to learn that the funding that was approved for the 16 instrument landing systems over a year ago, that no progress has been made in terms of the procurement of those instrument landing systems.

Senator FORD. None whatsoever.

Mr. HOWE. We are very concerned about that. And those are the types of things that I think an independent FAA, if it had these other elements in it, probably could expedite.

Senator FORD. Well, that is part of the problem of being in the DOT structure, that you have to go through so many layers to get approval, and then it is factored into the overall DOT and you are not zeroing in.

They need to build highways and that sort of thing, and that is fine. But flying is somewhat different than driving, and the structure and nomenclature of the aviation industry is so much different than building a four-lane facility.

I am not sure I could do either one, but I have been able to set policy and find the right kind of people to carry it out. I think that is what we are talking about in an independent FAA administrator.

Mr. HOWE. You are exactly right, Mr. Chairman. And one of the concerns that we have with the existing process is that, for example, in the procurement process today an important acquisition takes in excess of two years.

I am pleased that Administrator McCarter has, I think, made some very strong inroads into that area. I think he has recognized that as his number one priority. But I think he himself is frustrated by a system that really puts constraints on him.

Senator FORD. I think he started several bonfires. It is awful hard to stoke, as we would say down home, all of them. Some of them may go out.

I just hope he keeps 25 or 30 percent of them burning, and if he does he will be one heck of an administrator for a short period of time.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Thank you, Mr. Howe, for being here today. Are you concerned about the state of business aviation today from a safety standpoint?

Mr. HOWE. I am not concerned about it from a safety standpoint, because from a safety standpoint, at least with respect to the operation and maintenance of the aircraft, I am pleased to say that our excellent record is equal to and in some cases even better than that of the air carrier industry.

We maintain very, very high levels of maintenance and operation. However, having said that, we operate in the same system as everybody else does, so we are not immune to the safety concerns that everybody else has a concern about. We share the concerns about the potential for midair collisions.

We have welcomed both the regulatory and legislative proposals for TCAS, which we do support. We think that many of the safety proposals that have been made, as long a there is both controller staffing and hardware to make them happen, are good ideas.

We do have concerns, I might add, about the economic climate in which we operate, but once again we are not immune from the economic ups and downs of this economy, so we take our lumps there along with everybody else.

But I think it is a common system and from a safety standpoint every one of us that operates in that system is going to have to do our part to make it safer. But by the same token, we have got to be sure that the wherewithal exists, both funding and people, to make that happen, and I think that is our greatest common responsibility.

Senator MCCAIN. With the significant increase in regular airline travel, has that impacted the ability of people using business aircraft to operate?

Mr. HOWE. Actually, in many respects it has helped our industry, because with the hub and spoke system that has really characterized the airline industry since deregulation, it has benefited those companies that have a requirement to go on time critical trips from point to point, where they would be significantly delayed by having to go through Atlanta or Chicago or places like that.

So in that respect, deregulation and the increase in the air carrier business has actually benefited us. Obviously, in some locations, particularly the Northeast and some of the other busier locations, our operations, like everybody else's, have been subjected to delays and capacity problems, and we have the same concerns that everybody else does in that particular area.

On the other hand, I would observe that business aviation and general aviation in general in terms of percentages at the major airports occupies a very, very small percentage of the total amount of traffic.

So we view with great alarm some of the types of rhetoric that we hear coming out of places like Massport to constrain artificially those types of operations, particularly when they claim that they are doing it in the name of safety and the FAA says that there are no problems with respect to safety in those areas.

Senator McCain. Are you concerned about the possibility or increased likelihood of aircraft accidents, as many people claim is the environment today?

Mr. Howe. I think you have to put that in the perspective of look at the improvements that have been made in our system in the past 10 or 15 years. I think that there is no question if you look at not only the actual accidents, but I think a more significant figure, the potential for accidents, we have seen a steady downward trend.

There is no question that the system overall --

Senator McCain. Downward trend in that it has increased?

Mr. Howe. It is a safer system, a downward trend in accidents and a downward trend in the potential for accidents.

I think we have to be careful, however, to recognize that the reason for that is a couple of things: first of all, a large amount of professionalism on the part of the pilot community; secondly, the FAA's ability to provide positive separation through flow control, an ability, however, that sometimes is sorely strained by either obsolete equipment or lack of controller staffing. And I think that is something we have to be very sensitive to.

We also have to recognize that as we have more aircraft in the system, particularly in some busy air space, that we are going to have to impose some types of safety constraints to be sure that the good record we have had is not compromised.

But I become very concerned when I see reports in the press that the system is falling apart or is unsafe. I think that what we need to do is to look at some of the indicators out there, particularly in terms of increased traffic or some of the potentials, and address those, rather than simply wring our hands and say, because we have got more airplanes out there in some areas, that safety has been compromised.

Senator McCain. Finally, to help me increase my store of anecdotes, perhaps you could relate the circumstances surrounding the failure of the FAA to implement a program to install 16 ILS systems in this country?

Mr. Howe. Well, I think the circumstances are entirely—the culprit I think is the slowness of the procurement process and perhaps a certain reluctance to install ILS' because of the commitment to the microwave landing system. But I think the facts basically are that the Congress authorized over a year ago the funding for the procurement of a very modest additional number of instrument landing systems for some critical locations that were needed for both safety purposes and capacity purposes around the country.

I might add that during my tenure at the FAA I and many of my colleagues cried and yelled and screamed and bled sometimes to try to get instrument landing systems. In many cases, we literally had to rob components from one location to put them at a critical location because of our inability to get the instrument landing systems that we needed.

Here we have a situation where I think largely because of the procurement process, a year has gone by and we have made no progress whatsoever, at least in terms of any tangible instrument landing systems. These are off the shelf items that can be procured readily. The Air Force is buying them regularly.

There is no reason that I can think of that we could not procure these systems and install them, particularly when the funding is now assured.

Senator McCAIN. Just bureaucratic inefficiency?

Mr. HOWE. I tend to blame the procurement process, which of course is not just the Department of Transportation or the FAA. But certainly the procurement process, aggravated by levels of bureaucracy, has resulted in this.

Senator McCAIN. Thank you very much, Mr. Howe. I appreciate it.

Thank you, Mr. Chairman.

Senator FORD. I might say to my friend that the ILS and the MLS has the same problem as the communications system, national air space system. We had the banners flying and everything and we were going forward, but we did not have the technology or the possibility of a system being in place.

So now with ILS going to be obsolete and MLS coming on line, which has not come on line, we found a delay and that is the excuse for delay. And we have ten or eleven ILS' in this budget which add onto the ones we have not put in last year that were budgeted.

I am not sure whether we are going to take that money and put it into highways or we are going to allow it to stay in ILS' this year. That just I think compounds the problems that we face as it relates to moving on and having to grab hold of an agency within the Department, that we should not have to do in order to put a management team together so we can move forward and do the things that even a non-pilot understands. And you, Senator McCain, would understand it so much more.

So I am looking forward to hopefully that we can go ahead and install the ILS' and move forward with it.

Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you.

First of all, Mr. Howe, I appreciated your comment on the midnight raid of the trust fund. I think, as you know, this is not yet a done deal. The raid has been attempted, but not necessarily completed, and there are a number of people, including many that are sitting here, that are concerned about it.

I am going to leave in a few minutes in order to go back to these negotiations that are going on under way in rooms back and forth across the Capitol on the continuing resolution. I sit as a member of the

Transportation Appropriations Committee in strong opposition to the action that was taken.

And I just simply want to say to you that Senator Hollings and others who are on both this committee and the appropriations committee, as am I, have strong concerns about the action that is being attempted. And if I could predict an outcome right now, I would predict that we will be successful in thwarting this raid.

Mr. HOWE. I appreciate that very much, Senator. I hope that the forces of justice will prevail on this.

Senator FORD. Amen.

Senator KASTEN. Mr. Chairman, I am going to have to leave in just a moment and I would like to make, if I could, a very brief statement with regard to the legislation before us, and ask unanimous consent that my statement be included in the part of the record immediately preceding the testimony of Mr. Henry Ogrodzinski of the Experimental Aircraft Association.

Senator FORD. Without objection, it will be.

Senator KASTEN. As with our two previous hearings, we have heard from the former administrator that increased independence from the DOT in regard to purchasing, personnel matters, and promulgation of safety rules would be desirable.

And I also feel strongly that a seven year term for the administrator is very important, and I am pleased that this is being shared by our witnesses here this morning.

It was also noted in our previous hearings in NTSB Chairman Burnett's view that perhaps an independent FAA might not as responsive to the NTSB recommendations as he would like. Several examples of the assertion of DOT authority in a positive way were cited.

But it is important to recognize, and we are also aware, that we have had testimony from most, if not virtually all, of the other organizations in the aviation community as to the positive effects that they foresee from the establishment of an independent FAA.

I think Transportation Secretary Burnley in his hearings here indicated a willingness to us to look at increased independence for the FAA during his hearings. Today we hear several important voices from the aviation community, and I simply want to say I look forward to working with you, Mr. Chairman, with Senator Kassebaum, and other cosponsors toward the best structural arrangement for the FAA.

I am pleased to welcome as one of our witnesses today a personal friend, Mr. Henry Ogrodzinski of the Experimental Aircraft Association, based in Oshkosh, Wisconsin. This group is the broadest based general aviation organization in the country, with over 120,000 members.

They are the sponsors of the EAA's annual fly-in, and under Henry's direction have taken great strides in advancing the views of the general and also the sport aviation community.

I have had an opportunity to take part in that EAA fly-in over the past couple of years, and I would welcome any of the committee members to join us in Oshkosh. It is an extraordinary weekend.

Senator FORD. Without communications, too.

Senator KASTEN. It is a weekend in which there are people, as Henry's testimony talks about, people from all over the world, but more importantly people from the FAA and the Department of Transportation. They come in from all over.

But Henry is a good friend and I simply wanted to extend this welcome in advance. His remarks I know will be an important voice in this matter.

Mr. Chairman, I thank you.

Senator FORD. You are welcome, Senator Kasten.

Senator Exon, we welcome your arrival. If you have any statements or questions of Mr. Howe at this time.

Senator EXON. I just have one question, Mr. Chairman.

Mr. Howe, thank you for being here at this tremendously important hearing, and I congratulate the chairman once again for focusing attention on something we hear an awful lot of talk about, but very little action. And of course, I am speaking specifically of improving the overall safety of our airlines.

I noticed a headline in one of the daily newspapers, USA Today, about the lack of security at some of our airports. It is not directly on the subject, but it is a part of it. There are those of us on this subcommittee and the Commerce Committee as a whole who would feel very strongly that there has been too much talk and not enough action.

That is why I enthusiastically support the legislation that you are here to support today, because we feel that in the past there have been too many excuses and not enough positive action to move ahead with this important matter, air safety, especially given the increased traffic that is in the skies, primarily I suggest as a part of the deregulation efforts, which I think overall have been positive.

As we move on down this road and as a supporter of this legislation, however, it is always wise to pause and see if there are any changes that should be made. As this has evolved, certain changes have been made.

I agree that the seven year term for the administrator is a good one. I think the problem that we have had, though, basically in the past is finding an individual who wants to serve more than a year or two or three in this very responsible undertaking.

But in looking back, and as a supporter of the bill, as am I and I think most of the members of our committee, any misgivings that you have with regard to the legislation? Or I would like to ask you, as a man thoroughly schooled in the difficulties before us, if you were going to play the devil's advocate what would you cite as some possible troubling factors of what I think will eventually become a change of making the FAA an independent agency?

And what should we be watching? Or to put it another way, do you have any suggestions as to improvements that might be made in the legislation?

Mr. HOWE. Thank you, Senator. I appreciate your remarks because I think you hit a couple of things that I think it is very important for us to be cautious about and sensitive about, and I included some of those in my opening remarks.

First of all, it is absolutely imperative that we be sure that we depoliticize the FAA and the FAA administrator. I think that the seven year fixed term or whatever fixed term finally ensues will go a long ways towards doing that.

The other critical thing that must be done is to assure a source of funding. None of this is really going to work very well if we are going to operate under the existing type of funding arrangements.

As long as the FAA is going to be subject to either the whims of OMB or to attempts to use trust fund money for other purposes or whatever the other type of things that have been going on are, we are not going to accomplish this objective. I think that is almost the sine qua non of any type of legislation to fix that.

Those are I think two very critical things. I think as I mentioned in my testimony, we must be sensitive to the role and responsibility of the FAA as part of the national defense system.

We must be careful that as we make these changes, that we not do anything that will adversely impact the military mission of the United States, because obviously military aircraft and military systems must rely on the national air-space system to provide them the opportunity to do their mission.

That is a very important caveat, I think. I think that it is extremely important that the role of the Federal Government vis a vis the role of state and local governments, particularly on important issues such as airport access, be clarified.

One of the things that we view with alarm is the ability of state and local governments as airport proprietors to do things that will adversely impact the entire national air transportation system.

Just an example, and I think this is a good example of cooperation, there is a requirement that a runway in Los Angeles be closed for repaving. I am pleased to see that the FAA and the entire aviation community has come together with the airport to work out a means for accomplishing that. But if that type of thing is not done with a standardized Federally involved system, then we run the danger of having every state and local airport proprietor around this country in effect running their own little national air space system.

Those are the types of things that I think must be addressed in this type of legislation, because otherwise we are going to introduce a lot of problems into the system. I could go on with a number of other types of cautions like that, but I think those are the key types of things that we must be sensitive to.

These are number one things that need fixing now. Secondly, particularly with respect to the military, we must be sure that the existing ability of the military to function is not impaired.

Senator EXON. Mr. Howe, I take it from your testimony that you believe that the present funding arrangement, as far as the trust fund is concerned, is adequate and would meet the needs of aviation if we would just take the political strings off of it that have been part and parcel of several administrations, is that correct?

Mr. HOWE. I think the funding process—and I have to say this carefully. The funding process is adequate, i.e., the method by which revenues are raised I think has proven to be a good one, and we support the method by which funds are brought into the system.

The concern we have, as I think every other organization in this town has and I think the Congress has, is how those funds are allocated or in many cases not allocated. And I think it is critical that the funds be spent for the purpose that they were designed for, to make capital improvements in an aging system.

Senator EXON. My last question, Mr. Chairman, has to do with the concerns that you have raised. I think many of them very legitimate—caution flags if you will. I take it that you are saying that these potential problems are only going to be solved by the fair and evenhanded administration of whatever comes out.

I specifically ask you, do you think there is any legislative language or discipline that should be written into the law as it now stands that might better secure the concerns, possible concerns which you have raised?

Mr. HOWE. I am sure there is, Senator, and I think that probably some of that language, specifically the fixed term administrator, already exists there. But we would be delighted to consider some suggested language that might address some of the concerns that I have addressed to the extent that that language is not already in the bill.

Senator EXON. I thank you very much, and I would hope, Mr. Chairman, that you would agree that any suggestions along those lines could be submitted by Mr. Howe in a timely fashion and we would have a chance to look at them.

Senator FORD. I have no problem with that and the door is open, either for a visit or in writing, to any of the witnesses or those associated with the industry.

I met with the pilots and the manufacturers and business and corporate aircraft people, all of them, trying to do my best to have as much input that I can possibly receive personally and try to move from there. So any time they want to visit with me, I would be delighted to see them.

Thank you very much, Mr. Howe. It is a pleasure to have you with us this morning.

The next witness is Mr. Mike Coiner, Chairman of the FAA Conference, Federal Managers' Association. Mike, if you would come forward we would be pleased to have your testimony.

Mr. Conner, if you would advise the chair of your associate there so the name might be made a part of the record.

STATEMENT OF MIKE CONNER, CHAIRMAN, FAA CONFERENCE, FEDERAL MANAGERS ASSOCIATION; ACCOMPANIED BY CATHY BALL, LEGISLATIVE DIRECTOR

Mr. CONNER. Yes, sir. This is Cathy Ball, Legislative Director of the Federal Managers Association, which is the parent organization that the FAA Conference is a member of.

Senator FORD. We are delighted to have you with us this morning.

Mr. CONNER. Mr. Chairman, thank you for inviting us to testify today.

I serve as Chairman of the FAA Conference within the parent organization of the Federal Managers Association. The conference is made up of first line air traffic supervisors and airway facilities supervisors across the United States.

I have been with the FAA for 19 years. I started as a controller at Newark, New Jersey. I was an instructor at the FAA Academy in Oklahoma City for two years, and have worked as a first level supervisor at the Norfolk Tower for twelve years.

The FAA Conference within the FMA has been working on a proposal to set up an independent FAA that is similar to your bill, S. 1600. Our proposal has involved the input of all of our members and reflects an insiders' view of how things can be run better within FAA.

We believe that by separating out the FAA from the Department of Transportation we rid ourselves of many layers of management that are unproductive. Originally, it had been thought that placing the FAA under DOT would help the FAA have a cabinet level voice and influence. Instead it has no voice.

Often DOT issues policy for the FAA that is in direct conflict with the mission of the FAA. For instance, last year DOT forced FAA to reduce its personnel. FAA contracted out its automation and training functions. The automation contract has resulted in increased costs to the Government, as well as significant reductions in efficiency and quality.

We see the new Federal aviation authority as having five main functions: air traffic, aviation affairs, facilities and equipment, administration, and overseeing the aeronautical center in Oklahoma.

The five areas clearly define the scope and responsibilities of the new agency. Your bill provides for a seven year term for the administrator. We have the same idea, although our proposal is for a five year term. Clearly, we need some continuity in leadership for such an important activity.

Both the authority director and the deputy director should be appointed by the President and confirmed by the Senate.

We feel that longer terms for the two top directors are essential. Programs and policy in the FAA require long range planning. Each change in the administrator—and changes have been frequent—results in lost time for important projects.

A five year term will assure some continuity and also eliminate the attitude that becomes prevalent when there are frequent changes in leadership, that is, let us just wait the person out.

In our plan, associate directors would be nominated by the authority director and be subject to Congressional review. Budgets and policy will be developed by the associate directors. Each associate director will maintain a staff in the regions.

The present policy for budgets and expenditures creates serious problems within the FAA. For instance, air traffic develops a budget on a national basis and then delegates the money to regional administrators or division managers for their use.

It is routine for a regional administrator to divert the funds from air traffic to some other function. Our proposal provides for a direct line of responsibility and resources. This idea ties in with the next suggestion.

The present regional office structure creates little fiefdoms which headquarters cannot control. In our proposal, the number of regions would be reduced to thre. The nature of the regions will change. They will be responsible for the administrative functions only. Each region will handle one of the five main functions, such as pay and record-keeping.

Because the present structure allows each region to act autonomously, regulations are interpreted differently, policies conflict, and funds are expended for uses other than those designated by headquarters.

In addition, responsibilities are not evenly divided. For instance, the New England region may have two or three major air traffic facilities, while the Southwest region may have six to eight major air traffic facilities.

In addition, the present regional structure results in a duplication of effort for payroll and recordkeeping. Our proposal cuts down on duplication and instead stresses economy and efficiency.

We would look for a more stable source of income for the FAA than is present in the current budgetary system. Our idea is that a new tax or a users fee will be formed for all aircraft.

The taxes once designated for the trust fund would be phased out as this tax is phased in. The tax will be by the number of seats or weight of the aircraft. It will be one more step in the current licensing and certification procedure.

This tax will be the operating budget for the FAA, as well as the capital improvements fund. The funds generated would be set aside for use only by the FAA. The budget would be subject to approval by the relevant Congressional committees.

We believe that Congressional oversight is important. The present trust fund assets would be used as the operating budget for the first year of this new FAA.

This proposal creates a secure source of revenue for the FAA. It is an easily understood user's fee. This eliminates any conflict with national deficits. Present Congressional oversight of the budget will remain.

Finally, we would like to offer you another idea, one that we would strongly urge you to incorporate in your final legislation. We would like to see developed within FAA an authority policy board.

This policy board will advise and consult with the FAA on all aspects of policy. The board would be comprised of one seat for each of the following groups: consumers, FAA rank and file employees, FAA supervisors and managers, general aviation, military, air carrier, and business aviation interests.

We would work through the already formal structure of these groups, such as ATA, for referrals. The basic idea of a policy board exists today on an ad hoc basis. This formal structure will assure that the input from various groups is sought and incorporated into policy discussions.

Your bill does not address the issue of an advisory board. Senator Inouye's bill, S. 1159, does have a high ranking policy authority board and a technical authority board. Neither of these would seek the kind of input we think is necessary to run the authority efficiently and effectively.

Again, we support your plan for an independent FAA. We thank you for allowing us to share our views on this today and we would be happy to answer any questions you may have.

Senator FORD. Thank you, Mr. Conner. You make some interesting suggestions and your support is valuable.

In addition, as you related just a moment ago, to S. 1600, Senator Inouye, you referred to his bill that he introduced to create a public corporation to administer FAA's air traffic control system.

What is your view of the proposal and how does it compare in your opinion to establishing an independent FAA?

Mr. CONNER. I believe to privatize the FAA would lead to some imbalance in the system. The little guy may suffer as a result of that. We would like to see it remain within the Government function.

Senator FORD. Similar to other quasi-government operations, where you have policy direction and approval of the administrator, but yet you have independence? Just have one dedicated proposition and that is air safety?

Mr. CONNER. Yes, sir.

Senator FORD. S. 1600 proposes to transfer the authority over the promotion of aviation to the Secretary, rather than the FAA.

Do you have any views group your group as it relates to that part of this proposal?

Mr. CONNER. I think that should be transferred and should be separate from the FAA. We should be safety-related. We have promoted aviation to the point now where the air traffic system is straining at best.

Senator FORD. You have laid out several ideas worth considering in your testimony this morning and, as I said earlier, I appreciate those very much.

How will these and other provisions improve the ability of FAA to do what we are primarily interested in, our number one objective, and that is to ensure safety?

Mr. CONNER. I think the basic thrust is that we have an administrator or head of the FAA who clearly understands the issue and has firsthand information and can make the decisions that are required without the attendant political struggles on budget and manning and things of that nature.

Senator FORD. Do you want to relate any instances where an action by the Secretary of Transportation has adversely affected your ability to perform your job?

Mr. CONNER. Yes, sir. The contracting out of the automation functions within FAA. When this was first proposed, it came up one day and then a week later was implemented.

And in talking to Admiral Engen and Walt Lovesee, who was the associate administrator for air traffic at that time, they both said they did not like what they had to do, but they had to do it. Nobody clearly came out and said they were forced by DOT to do these things, but in talking with people at FAA headquarters it was quite clear they were forced by an outside force to contract out these functions.

They are now talking about bringing the automation back within FAA and run by FAA employees.

Senator FORD. I have found most of the contracting out is that the first year it seems to be somewhat an improvement in the cost, but the materials used are somewhat less than had been used previously. And in the second year the cost of the contracting out goes up tremendously and we lose the experience and the hands-on interest as it relates to keeping it in house.

And I am inclined to agree with you on that.

I have no further questions, Mr. Conner. Senator Exon?

Senator EXON. Mr. Chairman, thank you very much.

Mr. Conner, I believe you heard my previous question to the previous witness with regard to any red flags or yellow flags, caution flags, if you will, that should be put up in this area. I would just like to have you basically respond to the question.

There is a great deal of support for the measure that I support. I think we have to stop, look, and listen as we make changes like this so that we do not overlook anything.

Let me add another part to that question. I happen to feel that the establishment of an independent FAA will solve most, if not all, of the problems that we have seen in the past. And I believe that political considerations should be removed as much as we possibly can.

Having said that, of course, there is always the concern that people who want to get the political process out of it always run the risk—and I think as a supporter of this measure, I have run the risk—of saying, well, yes, but under the new system, if it becomes law, will the public perception, the public's actions, be considered along with those of the professionals in the industry—the airlines and Air Line Pilots Association, and the others similarly situated?

Is there any danger that we would create an agency that would be oblivious to the concerns of the traveling public? I think one could make the case that anything that is good for safety is good for the public that travels on that. But I am thinking of such things as scheduling, timing, many of the inconveniences that are pinned on the traveling public today, due in no small part, I suggest, to the fact that we do not have an efficient system working as we should.

The overall thrust of my question is, are there any key improvements in the legislation that you think we have overlooked in trying to put it all together with input from various parties, including yourself?

Mr. CONNER. I think the one key, and we addressed it in our testimony, is the advisory board that we suggest. Most of that is rank and file, and consumers are suggested to be represented on that body.

One of the dangers that I see is that any administrator under the present system or the new system gets so far removed from the daily operation of actually what goes on within the organization that they lose contact with it. The advisory board would maintain that contact on a steady basis.

We foresee the people meeting a minimum of four or five times a year. We would not be there to tinker with everything on a minute basis. Therefore, the administrator would have firsthand information.

With Admiral Engen, one of the things we had difficulty with, everything was filtered. It was changed from what was actually going on in the field by people in headquarters to meet their interpretation of the system. The advisory board would go a long way toward building in a system of checks and balances.

Senator EXON. Your advisory board concept then would not have any oversight responsibilities as such. It would not have to be consulted before the administrator moved one way or the other. But it would be a sounding and input board made up of—were you thinking primarily of substantially influenced by the general public or the consumers?

Mr. CONNER. The advisory board, it is important to have the consumers on there. We technical people sometimes lose sight of this, that these people bear the brunt of what we do or do not do.

It is important that the administrator have the information firsthand. We would not be there to tinker with the daily things, more of a broad-based policy function: Here is what is going on with the system, here are some suggestions that we should look at in the next year, or the issues that we should look at in the next year.

Senator EXON. I think that is a worthy suggestion. I appreciate your bringing it up. I have no further questions, Mr. Chairman.

Thank you, Mr. Conner.

Mr. CONNER. Thank you.

Senator FORD. We are trying to work out conferences here. If we could just clone these Senators, we would get it done by Friday, instead of Saturday or next week.

Mr. Conner, we thank you for your testimony this morning, and if you have any thoughts as a result of listening to other witnesses this morning or anything you would like to submit to the committee, we would be more than delighted to have it.

And we are delighted to have your legislative person here with you this morning and look forward to working with you in the next year.

Mr. CONNER. Yes, and Mr. Ford, in closing, I think the legislation that was proposed is heading in the right direction and we fully support it.

Thank you, sir.

Senator FORD. Well, you are mighty nice. It will be rocked several times before it gets through and hopefully what we put on track will be something that will be generally accepted and, as I say, reach our mutual goal of safety.

Thank you both.

The next witness will be John F. Thornton, National Coordinator for National Air Traffic Controllers Association.

STATEMENT OF JOHN F. THORNTON, NATIONAL COORDINATOR, NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION

Mr. THORNTON. Good morning, Mr. Chairman. On behalf of the nation's air traffic controllers, I would like to thank you for continuing these hearings and allowing us to testify.

I will be brief and read a short statement and ask that my full statement be included in the record.

Senator FORD. Your full statement, without objection, will be included in the record in full.

Mr. THORNTON. Thank you.

NATCA endorses the concept of an independent FAA as embodied in S. 1600. The idea of a single cabinet Department integrating all modes of transportation was laudable, but unfortunately as far as the FAA is concerned the noble experiment failed.

The FAA is also not blameless. The Department of Transportation is not the author of all the FAA's ills. If Congress decides to make the agency independent, we must make sure that all of the internal problems that have plagued the FAA for years are corrected and not carried over into this new agency.

NATCA contends that the DOT has meddled unnecessarily in the day to day running of the FAA. Following the 1981 strike, the administration looked upon the FAA as fertile ground for political tinkering and micromanagement. This meddling was not confined to DOT. The GS-9's and GS-11's at OMB are notorious for tampering as well.

The results of the heavyhandedness have not been good. NATCA is particularly interested in two areas, safety and management.

On safety, I cannot say that the DOT has ever muzzled the FAA or squelched a safety rule. However, DOT and OMB have had a more pervasive role. Their broad, free marketplace philosophy set the beat for the dizzying and intoxicating aviation growth since deregulation, but it did not ensure corresponding staffing increases.

NATCA gets the impression that the FAA merely danced to the DOT's tune and was following, not leading, the dance. This has not been an administration comfortable with regulation. Deregulation has been its hallmark. However, the FAA must be a regulator. It cannot be, as you said, Mr. Chairman, a cheerleader for the air carriers.

It has to be the agency that the public believes will put its foot down and say, we have to slow down until we get the personnel and equipment to handle the ATC demands. The public does not have that confidence in the FAA any more, and I doubt it can be regained as long as the FAA remains part of the Department of Transportation.

From a management point of view, the ATC system has not benefited from the FAA-DOT relationship. FAA's management did make some marked improvement under DOT in the 1970's and up until the 1981 strike.

The next six years marked the absolute nadir in FAA's management practice conducted under the tutelage and approval of DOT. But what caused these problems and the ensuing outcry was the complete breakdown of management and leadership within the FAA.

NATCA contends that much of the blame can be laid at DOT's doorstep, as it gutted the agency of authority and pride. We had administrators who would learn the job and then resign, perhaps out of frustration with the DOT's meddling.

The deputy administrator's office was vacant for unacceptable periods of time and career professionals were either leaving or not being promoted to the positions of responsibility that they rightly deserved.

The FAA did not abdicate power. It was taken away from the agency. What we have today is more of a provisional government under the rule of the DOT and it is not working out.

Given this situation, NATCA contends that it is time to make FAA independent again, as S. 1600 would do. NATCA also supports a number of proposals raised by former Administrator Halaby. We agree that the deputy administrator should be an FAA career professional. We need that institutional memory to avoid the mistakes and traps of the past.

We also agree that FAA appointments should be depoliticized to guarantee that careerists, not loyalists, are given first consideration.

Mr. Halaby was also correct when he stated that the administrator must be given authority to reorganize and modernize the FAA procurement process.

As to funding the agency, it would be ideal to have the administrator acting as trustee of the aviation trust fund. Politically, I do not know whether this is feasible. However, we must be able to provide a consistent and steady stream of funding to the FAA.

Congress will have to find some way to ensure that the FAA administrator, who may be out of political favor, will always get the resources he or she needs.

Mr. Chairman, NATCA believes that you are on the right track with S. 1600. We are most grateful that you have allowed us to participate and hope that we can offer you more assistance as the proposal takes greater shape.

That concludes my statement and I would be happy to answer any questions.

[The statement follows:]

STATEMENT OF JOHN F. THORNTON, NATIONAL COORDINATOR, NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION

My name is John F. Thornton and I am National Coordinator of the National Air Traffic Controllers Association, MEBA/AFL-CIO. NATCA is the sole bargaining representative for the nations' more than 12,500 Air Traffic Controllers.

NATCA endorses the concept of an independent FAA as embodied in S. 1600. Like you Mr. Chairman, I wish it hadn't come to this. I listened with great interest to the testimony of former FAA Adminstrator Halaby at the September 10th subcommittee hearing. The idea of a single cabinet department integrating all modes of transportation was laudable. It was evident that the best of intentions went into forming the Department of Transportation. But unfortunately I must agree with Mr. Halaby—as far as the FAA is concerned, the noble experiment has failed. It is time to cut our losses and move on to the important task of restructuring the FAA to meet best our aviation safety needs.

I would also add that our comments today are no reflection upon Administrator McArtor's performance. NATCA believes he is doing a good job under very difficult circumstances. We trust that Mr. McArtor could do even more if the FAA was free of the Department of Transportation.

NATCA advocates an independent FAA because the marriage between the agency and DOT cannot be salvaged, and perhaps the two should have never been joined in the first place. But in reshaping the FAA we must examine what DOT did to cause this clamor for a separation. We must also ask if the current turmoil at FAA is an aberration that could mend itself in a different Administration. In other words, are we overreacting?

The FAA is also not blameless; DOT is not the author of all of the ills at FAA. If the Congress decides to make the agency independent we must be sure that many of the internal problems that have plagued FAA for years are corrected and not carried over to the new agency.

On the question of cause, NATCA contends, as many witnesses have before, that DOT has meddled unnecessarily in the day-to-day running of FAA. DOT has also politicized the agency to a previously unknown degree. Political appointees run deep into FAA and decisions appear bogged down in endless layers of bureaucracy.

When FAA became part of DOT it was hoped that the agency would retain its autonomy. But without written safeguards, the potential for abuse always existed. We didn't realize it because for a number of years there was a good working relationship between the DOT Secretary and FAA Administrator. And by a "good relationship", I refer to a certain hands-off attitude on the part of the Secretary towards FAA. Former DOT Secretary Boyd discussed this tacit separation of power in his testimony on September 10th and it sounded like a most productive way to do business.

Unfortunately, there has been a dramatic departure from FAA autonomy. NATCA is not here to throw stones at the present Administration. What recently happened at DoT/FAA could have occurred earlier or in an Administration to come; partisanship is nothing new in Washington. Unfortunately, following the 1981 strike, the Administration looked upon FAA as fertile ground for political tinkering and micro-management. And this meddling was was not confined to DoT; the GS 9's and 11's at OMB are notorious for tampering as well. We have to try to undo those mistakes as soon as possible.

The results of DoT's heavy-handedness have not been good. NATCA is particularly interested in two areas: safety and management. On safety, I cannot say that DOT ever purposely muzzled FAA or squelched a safety rule. I have no direct knowledge of any such occurrence. However, DOT and OMB have had a more pervasive role. When it was clear that our airspace was becoming saturated, DoT/OMB remained obstinate about hiring more Controllers. Senator Hollings put it well when he said that Congress practically had to force feed the Department more Controllers.

We have also discussed on numerous occasions whether the FAA should be engaged in both promotion and safety. Some observers even doubt that the FAA is engaged in promotion at all. Perhaps we are looking at the issue from the wrong angle. True, the FAA has promotional duties under Sections 105 and 305 of the Federal Aviation Act of 1958. But isn't any real promotional impetus coming from the Department of Transportation? The Administration's and DoT's broad, free marketplace philosophy and policies certainly set the beat for the dizzying and intoxicating aviation growth since deregulation. NATCA gets the impression that FAA merely danced to DoT's tune, and was following, not leading the dance.

This has not been an Administration particularly comfortable with regulation; deregulation has been more of its hallmark. However, the FAA must be a regulator. It

cannot be as you said Mr. Chairman, a cheerleader for the air carriers. On the other hand, this does not mean it has to be the national nanny that the Washington Post once accused the FTC of being. What it has to be is the agency that the public believes will put its foot down and say we have to slow down until we get the personnel and equipment to handle new air traffic demand. Rightly or wrongly, I don't believe that the public has that confidence in FAA anymore. And I doubt that confidence can be regained as long as FAA remains within DoT.

From a management point of view, the ATC system has not benefitted from the FAA/DOT relationship. It was hoped in many circles that FAA's somewhat hidebound management would loosen up under DoT. The agency has often been criticized for treating its work force as if they were military rather than civilian personnel.

FAA's management did make some marked improvements under DOT in the 1970s as the makeup of the work force changed. Controller involvement grew and overall labor relations progressed until the 1981 strike. The next six years marked the absolute nadir in FAA's management practices conducted under the tutelage and approval of DoT. FAA had a golden opportunity following the strike. It had a work force that was composed of Controllers who stayed on the job in 1981 and of new Controllers who were basically anti-union. Yet within six short years there was such dissension and dissatisfaction within the FAA that more than two out of three Controllers casting ballots voted for NATCA.

Why did the Controllers vote for NATCA? We have gone over the reasons, such as work conditions and safety. But what caused these problems and the ensuing outcry was the complete breakdown of management and leadership within the FAA. NATCA contends that much of this blame can be laid on DoT's doorstep as it gutted the agency of authority and pride.

We had Administrators who would learn the job and then resign, perhaps out of frustration with DoT's meddling. The Deputy Administrator's office was vacant for unacceptable periods of time and career professionals were either leaving or not being promoted to the positions of responsibility that they rightly deserved.

Given this virtual absence of authority, the FAA's nine Regional Offices began to flex their own muscles. The FAA became so balkanized that the nine regions resembled sovereign states. I do not believe for one minute that this chaos was the fault of the FAA. Before the current situation, the FAA was known for its tough even autocratic Administrators. The FAA did not abdicate power; it was taken away from the agency. What we have today is more of a provisional government under the rule of DoT, and it is not working out.

Given this situation, NATCA contends that it is time to make the FAA independent again, as S. 1600 would do. It addresses many of the problems that I have mentioned today. We must have an Administrator who can remain on the job for the seven years as your legislation provides for. We have heard Senator Lautenberg speak about the equivalent of a corporate CEO running the agency. That also bears looking into, as well as some of the management practices that S. 1159 proposes. I think that you would find the Controller work force very interested in discussing job flexibility.

NATCA also supports a number of proposals raised by Mr. Halaby. We agree that the Deputy Administrator should be an FAA career professional. We need that institutional memory to avoid the mistakes and traps of the past. We also agree that FAA appointments should be depoliticized to guarantee that careerists, not loyalists, are given first consideration. Mr. Halaby is also correct when he stated that the Administrator must be given authority to reorganize and modernize the FAA procurement process.

As to funding the agency, it would be ideal to have the Administrator acting as trustee of the Aviation Trust Fund. Politically, I do not know whether this is feasible. However, we have to be able to provide a consistent and steady stream of funding to the FAA. That is the gamble we are taking by removing the agency from a cabinet level department. There is some validity to the criticism that former DOT Secretary Boyd raised, that the head of an independent agency does not carry as much water as a cabinet secretary. Congress will have to find some way to ensure that the FAA Administrator, who may be out of political favor, will always get the resources he or she needs.

NATCA hopes too that an independent FAA will mean a national agency, not nine separate FAA's spread across the country. There is too much competition within the

regions and it is hurting us. Controllers find it difficult to move from facility to facility.

We need some internal FAA flow control where Controllers can follow a career course that will take them from the Academy to a low level fatility, then up to a high density one at the peak of their capabilities. The Controllers should then be able to go back down to a lower density facility when the wear and tear of the profession begins taking its toll. We are not fully using our best resource—our work force—to its greatest potential.

Mr. Chairman, NATCA believes that you are on the right track with S. 1600. We need an independent FAA. We have top-flight people at the agency who can do the job, but who have been stifled under the weight of DoT. NATCA realizes that these hearings are only the first step towards creating an independent FAA. We are most grateful that you have allowed us to participate and hope that we can offer you more assistance as the proposal takes on greater shape.

Thank you. I would be happy to answer any questions you might have.

Senator FORD. Thank you very much, Mr. Thornton. I appreciate your input and your willingness to help and to share with us your experience and knowledge so that we might make as few mistakes as possible as we journey down this rocky road to an independent FAA.

In addition to S. 1600, as you heard me probably ask the previous witness, Senator Inouye has introduced a bill to create a public corporation to administer the FAA's air traffic control system. It seems to be limited to that.

Do you have a view of that proposal, and are there any specific provisions in that bill that we should attempt to transfer to S. 1600?

Mr. THORNTON. Yes. We have studied both bills very closely. In S. 1159 we liked and, as Mr. Conner just suggested and we are suggesting also, is the inclusion of advisory boards.

We like the way Senator Inouye's bill handled the funding question. Something has to be done to ensure that FAA has the funding that it needs to complete its mission.

Looking at MR. Conner's and the FMA's suggestion also, we are inclined to favor the idea of consolidating some of the regions of the FAA. Today there are nine regions and, as he suggested, their own fiefdoms. There is just too much power in the regions, and when you try to make change the change that is necessary to make this agency function properly, when you have to go through so many degrees of hierarchy it is very difficult to impact change.

Senator FORD. Why would an individual controller fare better under an independent FAA than under DOT? And, in that same answer, would you say how would that person do a better job than is possible today?

Mr. THORNTON. For one thing, we believe that it would be much easier for an independent FAA to trim the procurement process and have the equipment that is necessary to function. We also believe that the staffing levels would have been much higher today under an independent FAA rather than under an FAA dominated by the DOT and OMB through the budget process.

Also, there would be the pride aspect. A controller would be working as part of the Federal Aviation Administration, whose main function would be safety and ensuring the expeditious flow of traffic. That has been missing from the system since 1981.

Senator FORD. In addition to the problem that the FAA must go through the Secretary of Transportation that has caused some delay, you referred in your full testimony to the Office of Management and Budget, I believe. How can an independent FAA be structured so as to insulate itself from what we worry about—political pressure that OMB would want to impose—and I underscore "would want to impose"?

Mr. THORNTON. We would have to get private funding through the Aviation Trust Fund or some other process and take that off budget, so that you just went around that process. An independent FAA administrator's suggestions or recommendations for equipment, financial needs for the Agency, would hold more weight under the new structure than it does today.

Senator FORD. So we are looking at a direct link, in your opinion, between the administrator and the trust fund and to allow that trust fund to go off budget and then fund FAA from that trust fund with an oversight from Congress. That is basically what we are looking at, is it not?

Mr. THORNTON. I would believe so, yes. I think there has to be Congressional oversight there.

Senator FORD. A number of people have expressed their concern that an independent FAA could become more of a tool of industry than dedicated to ensure aviation safety. And this advisory board, if we are not careful with who we appoint or set out a consumer, general aviation and so forth, we might be criticized that we are allowing it to be taken over by the industry.

What is your suggestion about how we might build protections into our legislation to ensure that this does not happen?

Mr. THORNTON. It is a problem that we would have to face if we were going to restructure the FAA. I think if you have consumer participation, plus professionals in the aviation community involved in that advisory panel. There is some form of that going on today in Washington at FAA headquarters. You have SUPCOM and the other committees that meet with the FAA.

But to give these committees, the user groups and the professionals in the system, equal participation on that board, plus strong Congressional oversight, I think we could skirt that problem.

Senator FORD. Well, if you look at the various associations around town, you have the Air Line Pilots Association, you have airport managers, you have four or five majors airlines, and then you find, as everyone knows, they have all come together to try to promote air safety and to improve it. And if we are not careful, if we appoint one consumer and we are trying to be fair to each one of those groups, would we not be tilted four to one as it related to the industry versus the consumer?

Mr. THORNTON. Well, I would not see making the advisory panel a consumer panel. I think you have to have strong participation by the professionals in the aviation system on that. Hopefully the good will of those people involved, plus strong Congressional oversight, would keep it from becoming, as you suggested, a cheerleader for the airlines. I just do not see that happening.

I think that degree of participation, the overwhelming question will be safety, and I am confident that all parties will respond to that mandate.

Senator FORD. Fine. Thank you, Mr. Thornton. I got into that because that is one of the criticisms. I want to get that out on the table and make it a part of our testimony so that we will have the backup when the time comes for the markup of this legislation.

So I have been kind of tracking that one item, and I hope you understand why.

Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

Mr. Thornton, on this advisory board, I think it is an excellent idea but it raises some questions this morning as to how we balance it. Do you envision a seat on that board by a member or a representative of the Air Traffic Controllers Association? That is a very important professional group.

Mr. THORNTON. I would think that all the concerns in the system since 1981 have been air traffic controller-related, and it would be foolish to have that board without air traffic controller participation—current air traffic controller participation.

Senator EXON. I guess I worry that this advisory board not be concocted in the legislation as a convention of people that meet four times a year, because I think if you get this too large you are going to give up any effectiveness that it might have as an advisory board to the director.

You know, I guess I have some concerns about employees, which the controllers would be, sitting on an advisory board to advise the boss.

Mr. THORNTON. Well, it works in western Europe and through Asia.

Senator EXON. It works where?

Mr. THORNTON. In western Europe and through Asia, and they call them quality circles or whatever you want, where there is participatory management. We are not really talking about the controllers or the supervisors, Mr. Conner's group, telling the boss what to do. It is purely advisory.

One of the major problems in the FAA since 1981 was getting appropriate information to the administrator as it comes up from the control floor through the first line supervisor, through the facility manager, to the region and then up to headquarters. It is much different than when it left the control room floor.

So I think it is more important to have that participation at the top.

Senator EXON. In order to streamline this advisory board and make it operate as you and I would like to see it, I believe, could we have a rotating system of some kind so that someone would serve on there for a given number of years—not seven, but a smaller number of years—and then rotate so that we would not have all of the competing but aligned experts in the aviation industry whose input I think is extremely important to the success of a separate and independent FAA?

Could we have some kind of a system where, for example, the air traffic controllers might have someone on the commission for a period of time, but not all the time, and kind of rotate this among the professionals?

Mr. THORNTON. I imagine it could be rotated. As you know, as the system changes the need for that information at the top would change also. So one representative could probably speak for two or three different groups. I do not think that that would be any problem at all.

Senator EXON. One last question, Mr. Chairman, of you, Mr. Thornton. I think the air traffic controllers just do a fantastic job of managing the crowded airways today in the overall responsibilities that they have and do. And I have been very proud of the job that they do.

When I have to sit in an airport on the ground waiting for something to clear, as much as I dislike that, it gives me a reassuring feeling that somebody is in charge. So I have always been a strong supporter of the job that you air traffic controllers do and the associations you represent.

I am always concerned about what is the current situation with regard to the air traffic controllers. Could you just take a few moments of the time? It is not directly connected but a vital matter as far as our safety is concerned. What is, in your estimation, the current situation with regard to overwork, the general morale? Are the newly-trained people coming on the job fitting into the system adequately?

What is the general scope of the quality and the morale of our air traffic control personnel as of this date?

Mr. THORNTON. Well, the answer will be a lot different today than it would have been six months ago. Now that we have an organization, controllers have more protection than they did last summer and years before that. I see some of the same problems, some of the same managerial problems remaining in the system, but I also have hope.

I see strong leadership out of Washington from the new administrator and its labor relations department that are demanding change through the regions, and on the control room floor, where there is more cooperation amongst the supervisors, managers and the controllers themselves.

The biggest problem remains, of course, the staffing levels. Too many controllers are still working six-day work weeks. Antiquated equipment continues to be a problem. Training is a problem and hopefully will continue to be a problem. That will mean that we have more people to train.

It is very difficult to do that training as the system keeps growing and growing because sometimes it is just too busy and too hectic to give the developmental training he or she needs at the time. So you may go for extended periods where a person will not be receiving that on-the-job training. Somehow we have got to come to grips with that.

I am very encouraged as to the way we are going in the FAA towards resolving some of those problems. Hopefully there will be a mandate either nationally or from Congress to hire more air traffic controllers and to just get very serious about the training.

The administrator has talked about more training in a link type trainer environment. That is fine for the future, but we have 1988 traffic and we do not have 1988 staffing levels, so we are going to have to get the people in and trained under this old system as quickly as possible and look forward to that new system when it comes in the 1990s.

Senator EXON. A couple of years ago there was a detailed report out that sounded the alarm with regard to the number of highly-skilled, highly-trained air traffic controllers leaving Federal employment and that we would not have the time to fill that gap, to bring new people along, which we always have to, to assume those responsible positions.

How about that phase? Has that been somewhat corrected, substantially corrected, or is it still a very serious problem?

Mr. THORNTON. That is an ongoing problem that we have to address, and the only answer that is feasible right now is to keep hiring and training as quickly and as consistently as we can. The people who are near retirement look at the budget problems. They got scared this last go-round when the lump sum may have been cut in half that they could get as retirement option.

So there seems to be an incentive for the controller who is approaching retirement age to retire, because today they know what they would end up with. If they hang in for a year or two, they just do not know what they will end up with.

Senator EXON. So we have not solved that. We have not immediately solved that part of the problem.

Mr. THORNTON. Exactly.

Senator EXON. Thank you, Mr. Thornton. Thank you, Mr. Chairman.

Senator FORD. Mr. Thornton, we will pass the airport improvement legislation today, which includes additional controllers, and we have a net increase of 900. We set the base at 15,000, so by attrition or retirement it means we are still going to have 900 additional. We may have 400 retiring, so that means 1,300 additional employees that we must go to.

I think that is putting a floor in it so we will not hire 900 more, and we have hired the 900 more and we are still at 15,000. So the base is there and we are going above that base and hopefully that bill will be passed around 12:30 today.

I wanted to ask you publicly to do something for me outside the record, and we may at some point want to put it on the record, but I do not want to do that without your concurrence. We are having a great deal of trouble, as you know, when you talk about the long hours and long days of securing controllers into heavier traffic areas.

It is awful hard to get a controller to go from Pompano Beach to Chicago. It is just very difficult. How do we do that? What kind of incentive is needed to achieve balanced staffing? It is more expensive and that sort of thing, and it is not in the controller's financial best interest or his family's best interests maybe to move under the circumstances.

So without making a public statement, unless you have got it all churned up and ready to go, I would like for you to just lay out maybe one or two or three different proposals that might enhance the controllers to go to the heavier traffic areas.

Mr. THORNTON. I would be glad to furnish that for the record. I do have some thoughts off the cuff on that. The highest rate of a controller today is GS-14, and that is determined by traffic, the amount of traffic that is worked. National Airport controllers are GS-14s. Controllers at Philadelphia International are GS-14s. Controllers at Chicago O'Hare and Hartsfield in Atlanta are also GS-14s.

But there is a wide gap in there as to the amount of traffic worked by the controllers from those two levels. It is almost like there should be perhaps a super level. Also, a controller who goes to O'Hare or to the New York Center is trapped. Once they get there and they qualify, they are going to play hell getting out of there.

Whether they still feel they can adequately handle that traffic, they are of value there. Somehow there would have to be a recovery clause where that controller could go to O'Hare or Hartsfield or New York Center and work for a number of years and then come back down to a lower density facility where his or her skills are still appropriate for that amount of traffic. We would probably have to consider financial incentives to get there and recovery incentives to leave.

Senator FORD. Well, it is an interesting part of the overall picture, and, you know, if I was living in southern sunny Florida I would not want to go to Chicago. I have nothing against Chicago, but the weather and the cost of living and that sort of thing makes it somewhat better to stay where you can enjoy it.

So if you will do that for me, Mr. Thornton, I would appreciate it. After the first of the year you can give some thought to it and let me have your comments. We thank you for your testimony today and we look forward to working with you in the future as we travel this road.

Mr. THORNTON. Thank you, Mr. Chairman.

Senator FORD. Henry, I am going to have a hard time pronouncing your name. A southern boy is not too good with anything beyond four letters. Ogrodzinski.

STATEMENT OF HENRY M. OGRODZINSKI, DIRECTOR OF POLICY AND PLANNING, EXPERIMENTAL AIRCRAFT ASSOCIATION

Mr. OGRODZINSKI. Ogrodzinski, Mr. Chairman, and I, too, am a southern boy from southern Wisconson.

Senator FORD. Well, they tell me that each Greek has two banks, and each bird has a bill, so I guess southern Wisconsin is better than northern Wisconsin.

Mr. OGRODZINSKI. I would think so, sir.

Senator FORD. You are Director of Policy and Planning for the Experimental Aircraft Association in Oshkosh, Wisconsin. Senator Kasten gave you an introduction earlier and that introduction will be in the record just prior to your testimony, so you may proceed.

Mr. OGRODZINSKI. Thank you, sir. With your permission, I would like to summarize and highlight the testimony rather than proceeding with all of it.

I have the privilege of representing 120,000 EAA members in 700 local EAA chapters across the country. Although tens of thousands of these members are in fact airline pilots and military pilots, we are truly a general aviation organization and, as people who participate in general aviation, we view ourselves as consumers of the product that FAA produces.

And, as such, we believe this bill is critically important to the future of American aviation, although for the past 35 years we have had a very cordial and relatively productive relationship with the FAA. We have had, during the past decade, to call for an independent FAA on several occasions. Our President, Paul Poberezny, brought this up as early as 12 years ago.

Since 1966 FAA has been hamstrung by unproductive and unnecessary review and control by the Department of Transportation. This, of course, has often been referred to as micromanagement and it has led to, we believe, inefficiency, lower productivity, and as serious degeneration of morale among the employees of the FAA.

If I may, I would like to share with you three small problems we have had in working with the DOT. The NPRM process—the notice of proposed rulemaking process. The purpose of that is to provide FAA with input from the field, thoughts, comments, ways these proposed rules can be improved to better serve the entire aviation community as well as the traveling public.

Unfortunately, the DOT has seen fit to keep the comment period, especially in the last two years, exceedingly short, as short as 30 to 60 days. There is no way that the consumers of aviation products, the pilots and aircraft owners of this country can respond to DOT within 60 days, especially when they cannot get those NPRMs from the FAA.

On several occasions my organization has had to reproduce thousands of copies of the NPRM simply because they are not available from the FAA or the DOT. As a result, we have had to ask for extensions on the public comment period on several occasions. When we ask for an extension we, of course, contact both the administrator and the Secretary.

We addressed Secretary Dole on September 17, 1986, with a letter which included the statement: "The purpose of an NPRM is clearly defeated when DOT provides an unacceptably short time period. The system is not working as it was designed. Today it is unfair, ineffective, and undemocratic.'

The Secretary never answered that letter, nor did the Secretary answer a follow-up letter, nor a letter based upon another NPRM issued earlier this year.

As a result of our high standards and our cooperation with FAA, the FAA has been very interested in working with us and they have been able to grant us minor extensions on some of the comment periods.

The comment periods for NPRMs relate most often to petitions coming from organizations like EAA. In the past few years we have attempted to improve aviation safety with two petitions. One would provide for a so-called primary aircraft which would be used for training new pilots and could be used by private owners for their own travel and recreation.

The other would be designed to enhance the proficiency of students learning to become private pilots. Originally the petition was misnamed the Recreational Pilots License petition. We prefer to refer to it as the Enhance Pilot Proficiency Training Program.

Basically it would allow a series of logical stepping stones that a pilot would be required to go through before receiving a private pilot's license. We believe that the result would be a more proficient pilot, greater skills in the cockpit, and instead of having a pilot student receive a Federal license at the end of perhaps as little as 40 hours it would provide the student as many as 100 or more hours of training, if necessary.

We believe both of these petitions would enhance aviation safety and, unfortunately, they have been stalled for the past several years and they have not been stalled, we have been told, by the Federal Aviation Administration; they have been stuck in DOT. The people who have been holding up these petitions, we believe, may not be qualified to judge the merits based upon safety and we are very concerned about that.

As Senator Kasten graciously noted, EAA is the sponsor of the world's largest aviation event. This summer we had over 750,000 people in Oshkosh, Wisconsin, over 15,000 airplanes. The eight-day event was very important for the aviation community. Over 500 forums, seminars and workshops basically on aviation safety.

Our biggest single exhibitors are NASA, the Federal Aviation Administration, and the Civil Air Patrol but, of course, all the major exhibitors, both United States and foreign, do come to the convention. The convention is an excellent opportunity for both Members of Congress and the FAA to take the pulse of the American aviation community, and many members of this Committee and your staff have attended the convention.

The Federal Aviation Administrator has attended the convention for about the past 20 years. Unfortunately, the Secretary has never seen fit to attend the largest and most important general aviation gathering in America, and we believe that that would show us that there is a distinct lack of interest by DOT in what is going on in the aviation community.

Based upon examples such as these, we do support S. 1600. We think it is a very appropriate bill. We believe that the FAA administrator should be appointed for a fixed term and we fully support the seven-year term suggested by S. 1600.

We would note that we certainly agree with Mr. Howe of NBAA with the FBI analogy. This is just the sort of organization that should have that independence and oversight by Congress. We would hope, of course, the salary scale of the Administrator would be adequate to attract some of the top people in the industry. We do need top managers in FAA, and we heartily endorse the bill's requirement that the top officers of FAA must have experience directly related to aviation.

Unfortunately, that has not always been true in the past.

Senator FORD. And is not true now.

Mr. OGRODZINSKI. Yes, sir.

Unfortunately, S. 1600 does not address the issue of funding, and I know that Congress has been extremely frustrated and disappointed by the aviation trust fund and the way that it has been mismanaged by DOT. We in the aviation community have been just as frustrated and we would recommend that FAA submit an independent budget each year to Congress, such as is the case with the National Transportation Safety Board.

We would also hope that some reasonable action could be taken on the aviation trust fund to get it off budget.

In relationship to funding, we have noted that the procurement, as noted by NBAA earlier today, needs to be improved and modernized. One example of that is the consolidation of the flight service systems. Unfortunately, over 40 percent of all the general aviation accidents that take place each year are weather-related.

FAA has a program of consolidating flight service stations which, of course, involve weather forecasting and weather briefing. Unfortunately, consolidation has become elimination. Adequate aviation weather has not become available in many areas of this country. It has seriously degenerated across the board.

An independent FAA should certainly have the procurement authority that it needs to work on programs such as this, the national air space plan, which is probably some seven years behind schedule at this time, and other programs.

We at EAA support the objectives of 1600, which would continue the current FAA functions with an independent FAA, and we certainly agree with the Committee's chairman when he says that safety must remain our number one priority. However, we would respectfully disagree with the provisions of this bill which would remove those requirements from the agency to be responsible for promoting civil aviation and leave that task to the Secretary of Transportation.

Frankly, neither the DOT nor the FAA have substantially promoted aviation in any way for at least a decade, and probably more. We agree with Mr. Conner when he says that the system is very close to capacity, but we do not believe that has anything to do with promotion. It is a system that has become archaic because the DOT has not allowed proper funding, proper planning, or proper procurement.

When the Chairman stated earlier that years ago the FAA, when the Act was enacted, the fledgling civil aviation industry needed the support of Federal regulators to ensure its survival, that is certainly true. But it is also obvious that the transportation segment of the aviation industry is a billion dollar industry today.

Perhaps that portion of the aviation community does not need Federal protection, but it does, as all portions of the aviation community need promotion.

I would respectfully submit that pilots are not born with 10,000 hours of time in their log books. Nor are the skilled, talented mechanics that we need today coming on the field without some sort of promotion.

Professional air traffic controllers and aircraft designers do not magically appear at their computer consoles. At some point in their lives all of these professionals were encouraged to get involved in aviation.

And unfortunately the promotion of aviation has been left up to organizations such as the EAA and the non-profit EAA Aviation Foundation, and many other organizations of that nature.

One of the most important economical and most neglected facets of the promotion of civil aviation is that of education. Unfortunately, the American public does not understand the complex aviation environment today, primarily because it has not received any form of information that would encourage it to learn more about aviation from the most logical source, the FAA.

Unfortunately, on some occasions journalists, not being fully aware of all of the activities in the aviation arena, convey misinformation inadvertently, and all of us have seen the editorials which really are nothing more than aviation bashing, and that has become something of a national pasttime recently.

The promotion of civil aviation involves education, and that is important and, we believe, critically important and we would hope that it would remain part of the FAA charter.

We believe, as many of the other people who have testified today, that it is in the best interests of FAA and this nation to have available to it information from the aviation community, whether that is done formally or informally. Our views on this issue are well known by Administrator McCarter and the previous Administrators.

We would hope that FAA would reach out to the talents and skills in this nation involved in the various aviation industries and various aviation organizations to assist them with not only the problems of today but long-range planning, which has been absolutely necessary in the past but unfortunately which has been neglected.

To that end, we would believe, since we are obviously a general aviation organization, that it would be timely and appropriate to recreate the office of general aviation within an independent FAA. There was an office of aviation that was established in 1961, and it was very productive, very efficient, and was very important to the entire aviation community.

After the Secretary recently announced the proposal to establish 23 super-TCAs around the nation, I had the privilege of participating in a briefing which was conducted by one of FAA's top officers and one of the prime architects of the super-TCA program. At the conclusion of the briefing I was puzzled because he made no reference to any plans for the nearly 600 airports which exist under the expanded TCAs.

I asked him about that and he told me he did not know that there were 600 airports under the expanded TCAs. It was up to our organization to tell FAA that those airports existed and that some contingencies must be made for them.

Now clearly if there was an office of general aviation, ladies and gentlemen involved in planning of that nature would consult with that office to find out whether or not general aviation would be adversely or positively affected by some of the rulemaking procedures.

In conclusion, I would like to emphasize that EAA does endorse S. 1600, the majority of its concepts, which would create an independent FAA and we do look forward to supporting and assisting this Committee in any way possible in having this legislation enacted.

That concludes my prepared comments and if you have any questions I would be happy to answer them.

[The statement follows:]

STATEMENT OF

HENRY M. OGRODZINSKI, DIRECTOR OF POLICY AND PLANNING

EXPERIMENTAL AIRCRAFT ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

I am Henry M. Ogrodzinski, Director of Policy & Planning for the Experimental Aircraft Association (EAA). On behalf of my fellow 120,000 EAA members and 700 local EAA Chapters across the United States, I would like to sincerely thank you for inviting us to express our views on S.1600, the Federal Aviation Administration Independent Establishment Act of 1987. We believe that this bill is critically important to the future of American aviation.

For over a decade, EAA's founder and president, Paul H. Poberezny, has publicly pressed for the reestablishment of the FAA as an independent government agency. Since the FAA was incorporated into the Department of Transportation in 1966, it has been hamstrung by unproductive and unnecessary review and control by a number of staff offices within the Office of the Secretary of Transportation. This "micro-management" has lead to increased inefficiency, lower productivity and a serious degeneration of morale among FAA's most loyal and dedicated employees.

The Experimental Aircraft Association believes that the negative effects of DOT management of FAA responsibilities have been amply demonstrated. [illegible] may, I would like to share with you three examples which we find troublesome.

We believe the process involving Notices of Proposed Rulemaking (NPRMs) has been unfairly and unrealistically distorted. As the members of this committee are well aware, the purpose of an NPRM and a public comment period is to obtain reasonable, insightful comments and additional data from those who will be affected by the final rulemaking. This is especially true in the extremely important and complex NPRMs which have been issued in the recent past. Unfortunately, the DOT has seen fit to issue unacceptably short comment periods on many of the most important recent Notices of Proposed Rulemaking. I believe that it is unreasonable to expect members representative of the entire aviation community to request a copy of an NPRM, receive it, study it and provide thoughtful comments within a 60 day period. This is especially true when the majority of the aviation community is not notified of the NPRM. Most pilots and aircraft operators do not receive the Federal Register. As a result, they rely upon organizations such as EAA to notify them of important NPRMs. In fact, even when members of the aviation community are aware of important NPRMs, they often find it impossible to obtain a copy from the Federal Aviation Administration. As a result, EAA has often been required to reproduce, at its own expense, thousands of NPRM copies for general distribution since the majority of the pilots and aircraft owners affected by them were unable to obtain copies from the Federal Aviation Administration.

Since the majority of the aviation community members face incredible difficulties in obtaining copies of NPRMs from the FAA in a timely manner, they expect this information to be transmitted to them via private associations such as EAA. With the lead time requirement for our primary monthly journal, it is impossible for the average American citizen, affected by the proposed regulations, to provide his or her comments to the FAA within a 60 day time limit. As a result, EAA has been frequently required to ask for extensions on the public comment periods for NPRMs. In his letter to

Secretary Dole of September 17, 1986 (to which he never received a reply), Paul Poderezny wrote, "The purpose of an NPRM is clearly defeated when DOT provides an unacceptably short comment period. The system is not working as it was designed. Today, it is unfair, ineffective and undemocratic." On June 24, 1987, EAA's president again found it necessary to request an extension to a public comment period and wrote to Secretary Dole, "Those of us whose activities are governed by the Department of Transportation have lost faith in a process which seems to ignore the best interests and opinions of those governed. I hope that you will find time to consider this matter. I know the entire aviation community will be interested in your reply." As usual, the DOT neglected to answer these letters. Fortunately, because of its spirit of cooperativeness and its reputation for establishing the highest standards, EAA has been able to obtain minor extensions to the public comment periods from FAA administrators...but only after repeated requests.

Over the years, the Experimental Aircraft Association and many other aviation oriented organizations have petitioned the FAA on matters which would promote or enhance aviation safety. Two of the petitions most important to the aviation community have been submitted by EAA. One would lead to the development of an economical and efficient "primary aircraft" to be used in aviation training and by private owners for their own education, recreation and travel. The actual development of the aircraft would be left up to private industry. The aircraft themselves would, of course, need to receive the approval of FAA before mass production, as is the case with all aircraft. As the members of this committee know, there is not a single American general aviation manufacturer building an aircraft for training purposes today. The second petition would provide for a series of logical, educational and training stepping stones (each monitored by a qualified federally licensed flight instructor toward achieving the private pilots license). Although this concept was originally misnamed as the "recreational pilots license", we at EAA would prefer to refer to it as the "enhanced pilot proficiency training petition." We believe that the graduated stepping stone theory of aviation training, which was used highly successfully in past decades, would lead to better skilled and more proficient pilots.

Unfortunately, although both of these petitions have been in the bureaucratic mills for several years, no substantive action has been taken upon them. Highly credible sources have informed us that the decisions on both of these petitions have been held up not by the FAA, but rather by DOT personnel who may not be qualified to judge the true merits of these proposals.

For the past 36 years, the Experimental Aircraft Association and the non-profit EAA Aviation Foundation have sponsored the annual EAA International Fly-In Convention and Sport Aviation Exhibition. Since 1970, the EAA convention, which is the largest annual American aviation event of any kind, has been held in Oshkosh, Wisconsin. This year, over 750,000 aviation enthusiasts gathered in Oshkosh for the eight day event. Over 15,000 aircraft participated in the event and Oshkosh's Wittman Airfield was four times busier, during that time period, than Chicago's O'Hare International Airport.

I know that some of you and your staff members have attended the convention in the past and we have had the privilege of welcoming Senator Kasten to the EAA Convention for the past three consecutive years.

Why is the convention important? Virtually every major American and foreign manufacturer of general aviation products is an exhibitor at the EAA event. In addition to being an enjoyable experience, the EAA convention is the most significant aviation education opportunity of the year. The displays focus on high technology and new products. Our largest single exhibitors are the National Aeronautics and Space Administration, the Federal Aviation Administration and the Civil Air Patrol. Throughout the convention, over 500 seminars, workshops and forums are offered on every aspect of aviation, aviation technology and aviation safety. This single event is important because it is there that we can accurately gauge the health of the aviation community in America. Every Federal Aviation Administrator for the past two and a half decades has found it productive to attend the EAA convention as a way of taking the pulse of general aviation in America. However, to my knowledge, no Secretary of Transportation has seen fit to attend the EAA convention either publicly or privately. This total lack of interest in America's largest and most significant gathering of the aviation community is unconscionable. How can one govern or regulate aviation if one is not interested in seeing, experiencing and learning from the finest aviation event this nation has to offer. By the way, although the Secretary of Transportation has always been invited to the convention by EAA's president, Paul Poberezny, we have rarely even received the courtesy of a reply to the invitation.

Based upon this brief description of DOT's lack of interest in the general aviation community and the problems general aviation has experienced in attempting to work with the DOT, I am confident that the members of this committee can appreciate the reasons for our deep concern and our support of S.1600.

We at EAA believe that the FAA Administrator should be appointed for a fixed term and we fully support the seven year term suggested in S.1600. We also note that much has been made of the argument that "cabinet rank" is important to the aviation community that it ought to be represented by a Secretary. However, when the old CAA was made independent of the Department of Commerce, the agency was extremely efficient and productive and its Administrators were amply able to respond directly to the President, the Congress and the public. A strong FAA Administrator, who has the confidence of the President, the Congress and the public, will be highly effective.

We would hope that the salary scale of the Administrator, the Deputy Administrator and other top executives of the Federal Aviation Administration would be adequate to attract and maintain the most experienced and skilled managers available. We also heartily endorse the bill's requirement that the officers of FAA must have experience in a field directly related to aviation. Under strong and effective leadership, we would also hope that the FAA would be able to modernize and improve its personnel procedures.

Unfortunately, the copy of S.1600 EAA has studied does not address the critical issue of funding. The entire aviation community, and certainly the Congress, have been frustrated by the mismanagement of the Aviation Trust Fund. We must find a way to assure adequate funding for the Federal Aviation Administration. Annual appropriations may also be necessary. We recommend that FAA submit an independent budget to Congress each year, such as the case with the NTSB.

In relationship to funding, we have noted that the procurement system employed by FAA needs to be improved and modernized. This committee knows that every major program initiated by FAA has fallen terribly behind schedule. An independent FAA should have procurement authority and EAA agrees with earlier witnesses who have testified that the FAA Administrator should be given extraordinary powers to reorganize and modernize the procurement system.

We at EAA support those objectives of S.1600 which would continue all current FAA functions within an independent FAA. We certainly agree with this committee's chairman that aviation safety "must remain our number one priority." However, we would respectfully disagree with the provision of this bill which would remove the requirement that the agency be responsible for promoting the development of civil aviation, leaving that task to the Secretary of Transportation.

Yes, we agree with the chairman when he states that, "Years ago when the Federal Aviation Act was enacted, the fledgling civil aviation industry needed the support of federal regulators to ensure its survival." It is also obvious that the aviation transportation segment of the community has grown into a billion dollar industry. But, we would respectfully suggest that pilots are not born with 10,000 hours in their log books. The skills of talented mechanics are not learned by symbiosis. Professional air traffic controllers and aircraft designers do not magically appear at their computer consoles. At some point in their lives, these fine men and women were encouraged to seek their full potential in the world of aviation. They began their careers because they were encouraged to do so through the efforts of organizations which promote aviation and aviation education.

Unfortunately, for the past many years, the promotion of the development of civil aviation has been left up to private organizations such as EAA and the EAA Aviation Foundation. We believe that promotion of civil aviation should remain an integral part of the FAA charter. Aviation is enormously important to the growth, stability and security of this nation. It is far too important to leave the promotion of the development of civil aviation to those within DOT who have amply demonstrated their lack of understanding and appreciation for the highly complex aviation environment of today.

One of the most important, most economical and most neglected facets of the promotion of civil aviation is that of education. While the members of this committee fully understand the complexities of the modern aviation community, the vast majority of the general public does not. One need only

pick up a newspaper or flick on a television to witness the lack of understanding evident in many journalists. Misinformation is often conveyed to the general public as fact. In some quarters, those who do not understand the aviation community, which is the most closely regulated of any activity in America, would set themselves up as our judges. "Aviation bashing" has become a popular pastime. The promotion of civil aviation is critically important and we at EAA hope that this will remain part of the FAA charter.

There have been some suggestions made by other private aviation organizations which would change the essential nature of the FAA. Some have suggested that we privatize the current air traffic control system. Others have suggested the establishment of an independent, quasi-government corporation which would split FAA's responsibilities in the areas of safety and regulation. We, at EAA, oppose these proposals. We believe that S.1600 is a far better vehicle for achieving a logical organizational structure and assuring the protection of the public interest and safety.

However, we do believe that it is in the best interest of the FAA, the general public and the aviation community to make provisions for industry consultation. While segments of the aviation community may not always agree with FAA actions, the aviation community's input must be considered within the regulatory functions of the FAA. Our views on this issue are well known by Administrator McArtor and his predecessors. We hope that FAA will reach out to the people and resources available to it across the country. I know that they are eager to provide FAA with assistance in solving today's problems and in facing the long term challenges of aviation. We sincerely hope that the FAA will be more open to the ideas, suggestions and comments being offered by thoughtful solid citizens who have a deep and abiding interest in improving aviation safety. Sadly, it is the feeling of many of us, in the field that FAA frequently simply "goes through the motions" with regard to the NPRM process and eventually does what it wants to do in spite of valid input by those who will be affected by the regulations. In September of this year, EAA's president wrote to Administrator McArtor of our support for many of FAA's actions. However, he noted that those of us who have valid input to offer feel that the system in Washington is not allowing those of us who are "considered to be part of the problem to also be part of the solution."

To that end, we believe that it is both timely and appropriate to recreate the office of general aviation in the FAA. When it was originally created in 1961, FAA's Office of General Aviation was a very useful operation and had the respect of the aviation community as well as the top management of FAA. This office was extremely productive and if it were established under an experienced manager, it could greatly benefit the general aviation community by expediting some of the important matters that have been lacking, not only within the industry but within FAA as well. Today, decisions are made, which directly affect the aviation community, in a vacuum. In the recent past, we have seen several decisions made which will have a negative affect on the general aviation community simply because no one at FAA or DOT thought to ask about the far reaching implications of the decision. The experience and talent is available to FAA, if only it will utilize it.

In conclusion, I would like to emphasize that EAA endorses the majority of the concepts embodied in S.1600 which would create an FAA independent of the DOT and we look forward to supporting and assisting this committee in its efforts to enact this legislation. Again, I would like to thank you for the opportunity to express our views before this committee.

Mr. Chairman, members of the committee, that concludes my prepared statement, I would be happy to respond to any of your questions.

Senator FORD. Thank you very much.

Senator Exon is like some of the others. He has another meeting to attend, another conference to go to. He has asked that he might ask questions now, so I yield to Senator Exon.

Senator EXON. Thank you very much, Mr. Chairman, for your consideration.

Mr. Ogrodzinski, harkening back to the important conference that you referred to that was held earlier this year, how much consideration was given and what was the level of concern at that conference with regard to terrorist type activities and the threat that continues to be posed to the safety of the traveling public in general?

Certainly, I think we can recognize from the record that hijacking has been all but eliminated with the security at the airports today, but there have been some recent events—one in the United States and one in the east—that indicate that something like this could be rearing its head again. I am very much concerned about the possible terrorist threat in the future with regard to plastic explosives in luggage, plastic handguns, and these kinds of things.

Is that a major concern of the aviation industry in general and, if so, was it covered to any extent in the recent conference?

Mr. OGRODZINSKI. Unfortunately, in the portions of the conference that I participated in those subjects were not addressed in depth. The subject must be addressed. All of us, whether we are involved in general aviation or commercial aviation, whether we fly our own aircraft or are passengers on airlines, are very concerned about the issue of terrorism.

And we believe that it is absolutely necessary to address these issues. But, as I said, Senator, unfortunately, in the portions I participated in those discussions were not part of the conference.

Senator EXON. I would just say, Mr. Ogrodzinski, that those of us who are concerned about this, as you are, sometimes—I do not say this critically—get tied up in our own particular field or our own particular scope of interest and maybe tend not to look down the road and give necessary support for something that I think is a serious threat to anybody that goes up in anything with wings on it these days.

Mr. OGRODZINSKI. Yes, sir. I agree with you.

Senator EXON. Thank you. Thank you, Mr. Chairman.

Senator FORD. Thank you, Senator.

Let me ask you a couple of questions now. If Congress is to act on the legislation establishing an independent FAA, it is likely that the internal structure of that agency will be changed—significantly, I hope.

What thoughts would you have as they are related to the organization and supervision of various sections of an independent FAA?

Mr. OGRODZINSKI. One of the previous speakers had concerns about the way the nation was divided up into FAA regions. That is a problem, I think, for many of us. For instance, organizations such as ours very often deal with national issues. Unfortunately, because of the way FAA has divided the nation into regions, we must focus on those regions.

For instance, there is a problem with certain Hamilton standard propellers. We have addressed this problem as the aviation community. We have worked with FAA on attempting to solve the problem, and I think we are going in the right direction. Unfortunately, we cannot really address those problems here in Washington or back in our home state of Wisconsin. We must go to the east coast because propeller problems tend to be handled almost exclusively by the east coast region of the FAA.

The regional system must be looked at because in the past we have seen that in some cases regions have acted as independent fiefdoms rather than subordinate portions of an overall FAA.

One example in particular is the auto fuel STC program which FAA initiated some eight years ago in an effort to utilize auto fuel in certain types of aircraft, where it is usable. We went through about 2,700 hours of flight field testing with FAA flight test engineers, with FAA test pilots. All of the tests were computerized. Before and after, the engines were, of course, broken down and inspected. It was a long, drawn-out process, and the final analysis is it was a successful program and it benefited the aviation community as a whole in America.

We went through all of those steps because our organization is in the Great Lakes region of the FAA. One of our colleagues in the next region over initiated a similar program and, based upon the regional inspectors there, all he had to do was conduct a 500-hour static engine test. And clearly there was a great difference between what was required in one region and what was required in another.

Senator FORD. You have given the Committee some instances of problems with FAA and delay and that sort of thing, and you referred to the Department of Transportation. Are there any positive things that DOT has done?

Mr. OGRODZINSKI. None that I can think of, sir.

Senator FORD. That answers that right quickly.

Much of the industry's concern seems to stem from a frustration over the budget process. If it is politically impossible to remove the trust fund from the Federal budget, what are some suggestions you might have as to how the money in that fund can be put to better use?

Mr. OGRODZINSKI. Right now the money in the trust fund is clearly not being used for the intention for which it was collected. All of us, whether we pay the eight percent tax when we board an airliner, whether we pay the taxes when we buy tires and spark plugs for our own aircraft, or in any fashion buy fuel for any airplane, we expect a certain amount of service, a certain amount of benefit from that tax money.

Unfortunately, it is not being used for the purpose intended—improving the airports, improving the airways, and, we would hope, enlarging the capacity of the system. Much has been said about the recent attempt at a midnight raid on the trust fund. Acts of that nature absolutely must be prohibited, and I would urge, I would beg the Congress to prevent that sort of thing from happening.

Senator FORD. Senator Hollings is representing us and, as you know, he represents us well. Now that the masks have been taken off maybe we can prevent the raid.

Mr. OGRODZINSKI. I think that is an excellent idea, sir, and the aviation community applauds your efforts. The trust fund was not meant to pay FAA salaries. I can understand the concerns of those who work within FAA, and we do support FAA as much as possible. There are some very dedicated and loyal people within FAA who do their utmost, but we have been absolutely frustrated by DOT oversight.

After taking care of the important reconstruction of the air traffic control system and many of the other areas of FAA that are absolutely necessary at this point, I think then we can look at additional funding from the trust fund for operations of FAA. But as I recall from the original Act that was a lower priority than airway and airport enhance, and I would hope that that would continue.

Senator FORD. Fine. Thank you very much.

One question just kind of popped in my head. You know how we are around here. We are discussing product liability as it relates to the age of an aircraft, the apparent deep pocket that is back there and the increased cost that is factored into an aircraft which reduces the amount of general aviation activity or leads you to fly in airplanes that are very old.

It prevents employment, manufacturing, new skills. It prevents the encouragement for research and development for new designs.

Does your organization have any feel as it relates to Senator Kassebaum's legislation, as it relates to product liability and the age of the aircraft?

Mr. OGRODZINSKI. Yes, sir. We have supported Senator Kassebaum's legislation. We believe product liability legislation, tort reform in the general aviation community is absolutely necessary. We have also supported Mr. Glickman in the House in his work on product liability legislation relating to general aviation.

Last weekend I was privileged to fly a J-3 Cub that was several years older than I am, and I have every confidence in that fine machine. It performed exactly as advertised and worked in all ways in a superior manner. When the airplane was designed and built over 40 years ago I am sure that the people who built it, the people who designed it had no idea that I would be flying it 40 years hence and had no concern of requiring that airplane to last that long.

I think it is a tribute to our aviation manufacturers that they have in fact built such superior products. Unfortunately, they are being penalized for that very superiority by the long tail of product liability. I would not expect MR. Stewart Milar of the Piper Aircraft Company to

be responsible for ensuring an airplane that is 40 years old and that I flew last weekend.

Unfortunately, in other areas of the nation we have managed—I should say fortunately we have managed to avoid that in aviation. The manufacturers must guarantee their product essentially forever and that certainly drives up insurance premiums.

Senator FORD. Well, I thank you for that comment because that will be one of the early markups as it relates to that piece of legislation. We came very close to almost having agreement between the attorney representing the industry and the attorney representing the trial lawyers at that very table there, and I think now that everybody has gotten back to think about it, how in the world can you expect a company lawyer and a trial lawyer to agree.

But we surprised the world, I think, and it indicates that you ought to have discussions and communication is probably the most important product that we have in this arena.

Mr. OGRODZINSKI. Senator, if I might add, you were asking about the long tail of liability. You know, we do not expect a toaster to perform for 40 years. Very few of us have 40-year-old refrigerators in our kitchens or 40-year-old automobiles in our garages. And yet we expect manufacturers to guarantee their products for that long when they are involved in aviation. That is simply not fair.

Senator FORD. That does not eliminate the liability of a new engine being put on in recent days or months or years. It is that long haul that there is no way to factor in. And I have heard slow-roll this morning, which is the first time that has been injected into our hearings. The other day I heard that these aircraft have been restored from the ashes, and that is a new terminology.

So I learn every day something about the aviation industry, and I hope at some point we will be able to put together a piece of legislation that will be reasonably acceptable. I do not expect to have one that would be universally accepted, but I learned a long time ago, and coming from the great Commonwealth of Kentucky, Henry Clay's history there of the great compromiser continues on even in this body.

Thank you and have a good trip back to southern Wisconsin, and happy holidays with your cheese.

Mr. OGRODZINSKI. Thank you, sir.

[Whereupon, at 11:54 a.m., the hearing adjourned.]

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